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ALCOHOL AND DRUG ABUSE

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HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

ALCOHOL AND DRUG ABUSE IN THE TRANSPORTATION INDUSTRY

FEBRUARY 18, 1986

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ALCOHOL AND DRUG ABUSE IN THE TRANSPORTATION INDUSTRY

TUESDAY, FEBRUARY 18, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in Room 253, Russell Senate Office Building, Hon. John C. Danforth [Chairman of the Committee] presiding.

Staff members assigned to this hearing: Sherman Joyce, professional staff member and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Last November, a school bus driver in the St. Louis area was drunk. Whether or not drugs were also involved I do not know for sure, but I know he was drunk. He then picked up a load of school children, and while drunk, drove that bus on Interstate 70 and raced the driver of a car. He then drove the bus off the road, sheering the top off the bus, and two school kids were killed.

My position is very simple. No one has the right to get drunk or high on drugs and then get behind the wheel of a vehicle. I also think that it is wrong to operate a bus, truck, or an aircraft while under the influence of drugs or alcohol.

To state that general proposition is not to exhaust the issue. The purpose of today's hearing is to examine the drug and alcohol problem in three modes of commercial transportation: Highway, rail, and aviation. We will consider similarities and differencies in the modes to determine if this problem is being addressed adequately throughout the industry.

We have a distinguished panel of witnesses today. The first witness is the honorable Patricia Goldman, vice chairman of the National Transportation Safety Board.

STATEMENT OF PATRICIA A. GOLDMAN, VICE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Ms. GOLDMAN. Good morning, Mr. Chairman. Thank you for inviting me. I happy to be here to present the National Transportation Safety Board's views on this.

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The details of the kinds of accidents that you described in your introduction have been documented before this committee in many hearings. Therefore I will not go through the many of those that we have documented to you before. Instead I will address ourselves to the issue which you talked about, one which has escaped attention in this whole question of alcohol and drugs,. That is the confusing and inconsistent manner in which the Federal regulations dealing with alcohol and drug impairment are developed and applied in the various modes of transportation.

In a minute I will go into each of the modes in detail, but I think the confusion can be summarized by talking about the differences between the modes. In aviation, the FAA rules state, to summarize them, that there must be an abstinence period of eight hours and a blood alcohol content limit of .04 percent for a pilot beginning a flight and a ban on any drug use which is "contrary to safety."

In the highway mode, the Bureau of Motor Carrier Safety Rules which apply to drivers for motor carriers involved in interstate commerce there must be a 4-hour abstinence period before duty and there is no blood alcohol level limit. Therefore presumably a driver may ingest any amount of alcohol which, up to four hours before duty, will not bring his or her alcohol level up to a greater amount than what the state laws prohibit. In other words, in most cases a .10, which would be legally drunk.

Further, some drugs are prohibited for those carriers who are covered by the BMCS laws. In rail there is no preduty abstinence period, but there is a .04 percent blood alcohol limit, and operators covered by the FAA rules may not possess or use controlled substances or be impaired by them while on duty.

Of course, the fact that there are now finally some Federal rules, regarding the railroads, is a great pleasure to the NTSB, since we have been working toward that for a long time. We are glad the FRA's rules have finally been able to go through.

I should point out, however, in the rail area that there are currently no rules regarding alcohol limitations in light rail or in subway. So, as hard as we work on the FRA rules, those two areas are still not covered. Presumably an operator, subject to State laws, could consume any amount at an time prior to going on duty in those two modes of transportation.

The lack of uniformity is obvious, and it baffles the NTSB because there doesn't really seem to be a justification for that. The new rules I mentioned for in aviation, took effect in 1985, in June of this year. We still have several concerns which we have registered to the FAA in our comments on their rulemaking.

Research indicates that human performance is impaired by alcohol levels in the blood of less than .04 percent. In fact, recent studies show some impairment as low as .015. In addition, combined with the effects of fatigue and/or altitude, the net effect on the pilot's performance when there has been alcohol before flight, and other stressers, can be dangerous.

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Let me illustrate the point of the problem of setting a preduty abstinence period. An airman or, for example, a locomotive engineer, to include rail as well, could be drinking heavily. For example, a 180-pound person could consume 12 drinks in a 3-hour period the day or the night before going on duty.

That would result in a blood alcohol level of approximately, and these vary, of course, by personal physique, of approximately .16 percent. If the alcohol consumption would then be suspended, it would take approximately 8 hours for the person's blood alcohol level to drop to that .04 percent that is the prescribed, and then it would take another 11 hours to get to zero.

To make matters worse, there is now what is recognized in the field as the hangover effect. Hangover is not exactly a new term, but it is in terms of the human performance. There has been research showing performance decrements after all alcohol has disappeared from the body.

In fact, one study which tested 10 Navy pilots in simulators concluded that caution should be exerted when piloting aircraft 14 hours or less after ingesting what would be the legal drunk limit of .10 percent quantities of alcohol.

The authors of that study further went on to state that the use of alcohol prior to flight would increase the likelihood of a potentially fatal interaction between hangover effects and task difficulty when the unexpected emergency or the non-routine procedure suddenly appears.

Beyond those issues, of course, are the problems of enforcement. The enforcement system proposed by the FAA depends upon every State having the legal authority to arrest or test the pilot suspected of flying while intoxicated in order to trigger the FAA's review and enforcement procedures. The problem is that not all States have a "flying while intoxicated" statute. Ten do not. Others set levels at various stages, so there is no uniformity in that either. My prepared testimony gives BAL levels for each of the States.

The NTSB has recommended in our response to the rulemaking that FAA issue a rule defining "under the influence" at the lowest possible level consistent with the capability of testing equipment to measure and not as high as the .04 percent.

We understand that the latest generation of chemical testing equipment in use by police and forensic laboratories are capable of detecting alcohol in the body below the .01 level.

As to drugs other than alcohol, we have also made some recommendations to the FAA that they review the existing research and literature and, because of the capabilities that they have of CAMI, that there be some testing so that their findings can be applied across the board. The effects of drugs, beyond the ones that are commonly thought of have some deleterious effects should also be studied.

We think the research could be used throughout transportation and not just by FAA. As we get more information like this we can get more specific factors in assessing the human performance problems.

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In the highway mode, operating a truck or a bus while intoxicated is obviously addressed both in State and Federal statutes, but the Federal coverage is very slim. Various State laws, of course, prohibit driving while intoxicated and define presumptive levels of intoxication at various blood alcohol concentrations. State and local police have the primary enforcement responsibility in those mode, although I should note that commercial trucking companies have become increasingly involved.

According to representatives of several major trucking associations, a provision in the National Master Freight Agreement between the Teamsters Union and trucking firms will provide for immediate testing of employees suspected of being under the influence of alcohol and other drugs on the job as well as drug testing after 30 days' notice in conjunction with periodic Department of Transportation required physical examinations, and of course, as you are aware, there is beginning to be preemployment drug screening among some trucking companies.

Until recently the railroad industry prescribed and enforced its own alcohol and drug regulations, the so-called rule G's, which we have been up here and testified about innumerable times. The penalty for violating that was dismissal, and of course the enforcement was the responsibility of management of the railroads. Under those rules, railroad employees were required to turn in violators or be dismissed themselves. We found that it had been far from uniform.

Effective February 10, 1986, while a judicial review proceeds, the new Federal railroad regulations prohibit employees from using or possessing alcohol or any controlled substance while on duty or being on duty under the influence or impaired by alcohol or any controlled substance.

Also, the pre-employment drug screening will be authorized and become mandatory on May 1, 1986, so we have yet to see exactly how this is going to work. Effective enforcement of these regulations will be directly dependent on the agressiveness of railroad management and their ability to increase supervision of employees beyond present levels, which in the past have not exactly proved adequate.

We believe, Mr. Chairman, that there is no level of alcohol or impairing drugs in the body that can be presumed safe. We have concentrated not too much, I think, for the accidents, but a lot of the concentration in the past has been on the person like the bus driver that you cited who has been grossly drunk, and everyone recognizes that.

Although we are pleased that we have gotten to the current levels we feel we must go farther, and that there needs, in addition, to be a common and consistent level of zero BAC specified for commercial vehicle operators in all modes of transportation, not the .04 percent in rail and air or .1 in highway. I should mention although you didn't talk about it, but there is now no specified level in marine, although rulemaking has begun in that area.

We feel that safety would be served by a consistent specification of what impairing substances are addressed and a precise definition of what constitutes impairment. Achieving this needed consistency across the modes, I think, would be a worthy goal. It is my urgent hope that

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tougher Federal regulations will serve as an added deterrent to all those in our transportation system who continue to endanger lives.

I thank you for this opportunity to testify. I would be happy to go into more detail and give you those accident illustrations.

The CHAIRMAN. Your view is that all modes should be treated in the same fashion?

Ms. GOLDMAN. It seems that we are going to have to make the point for operators who may not understand what amount of alcohol or drug ingestion is going to get them to a particularly BAL. One way to do that is to have a uniform standard. It does not seem to the Board that there should be such a disparity, for example. as between highway and rail and marine or air.

The CHAIRMAN. Who are we talking about? For example, in railroads, we are not just talking about locomotive engineers, we are talking about other rail employees as well is that correct?

Ms. GOLDMAN. Obviously, other rail employees, because a number of the injuries and things that can happen would be thsoe who are working around the rail yards who are not actually operating the trains as engineers, the brakemen, the conductors. We have seen instances where there may be problems with conductors, and you have passengers whose safety must be maintained. So this should not be something just for the operators. And in fact that has been a point that has been made quite frequently.

The CHAIRMAN. Now, I am told that there have been no cases of accidents in commercial airline accidents in over 20 years due to the use of drugs or alcohol by the pilot.

Ms. GOLDMAN. The last one was way before I was on the Board. The last one was Japan Airlines in Alaska.

The CHAIRMAN. What caused that accident?

Ms. GOLDMAN. That airline in that case, the pilot was, without my total recall of the cause, that the pilot was in a state of intoxication.

The CHAIRMAN. Is it such a rarity for airlines that it is no problem at all? Should we treat airlines as different from trucks and trains because there is no history of accidents?

Ms. GOLDMAN. No, I don't believe so. We have a wonderful record in commercial aviation airlines, as you pointed out. The record is not that good in general aviation, although again it is still much less of an instance where we find that than in, say, the highway mode. There is a greater incidence of alcohol abuse and drug abuse in general aviation, and that is what the latest rule changes have been developed to deal with. Also in testing for alcohol there should be no difference. If anything, the effects of altitude produces some differences in the way the operator may be affected.

The CHAIRMAN. Well, what is the altitude problem? How does that interact with the use of alcohol or drugs?

Ms. GOLDMAN. Well, not being a medical person by background, but it is my understanding from my reading that the altitude intensifies the effects of the alcohol or drug in the system as the altitude changes. So a higher altitude would intensify the deleterious effects of such ingestion.

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The CHAIRMAN. Do you think that the key to any standard for drugs or alcohol in the system is the ability to test in some fashion?

Ms. GOLDMAN. Well, in order to know what abuse there has been, obviously, testing is the key to enforcement. If you are going to set a standard, there has to be some enforcement of that, and without a specific testing so that you can determine that, it is very hard to enforce. So, it is all part of a system that must be put in place.

The CHAIRMAN. Do you have any recommendations?

Ms. GOLDMAN. Well, personally, we have made a variety of recommendations to particular rulemakings. In terms of the licensing, one of the things that I note from your legislation is that it gets at the licensing again. There must be testing. There has to be enforcement, and one way you can get an enforcement is when you have an ability to take action against a license as the FAA does.

The CHAIRMAN. Right, but what I am talking about is the frequency of testing, and under what circumstances testing occurs. Does it occur only when somebody is hired? Does it occur once a year, twice a year? Does it occur after an accident, or for probable cause or on a random basis?

Ms. GOLDMAN. Now, in terms of the accidents we have—the Safety Board has definitely made recommendations that there be testing following an accident, so we can determine what involvement there has been in terms of the frequency.

The Safety Board has not yet taken a position on pre-employment drug screening across the modes.

The CHAIRMAN. You do not have any thoughts yourself on this subject?

Ms. GOLDMAN. I think there needs to be testing in terms of when you are driving or operating a vehicle in the public for public use, as you were speaking of the bus driver. I think that there are certain matters of privacy that may need to be foresaken for the ability to operate a vehicle in the mode would be a personal viewpoint, but one the NTSB has not yet spoken to.

The CHAIRMAN. Tell me about testing for drugs. It is my understanding that testing for alcohol is a little more precis than drug testing.

Ms. GOLDMAN. That is correct.

The CHAIRMAN. I understand that a drug test can pick up drugs that have been in the system for days. Is this correct, and if so for how long?

Ms. GOLDMAN. There is such a range of drugs. It depends upon whether we are talking about prescribed drugs or elicit drugs. I think back to a subway accident in Brooklyn several years ago, where there were traces of marijuana found in the operator but we did not have the precision to be able to tell when it had been ingested and how it had been ingested. In fact, just being in the presence of the use of drugs and not ingesting yourself from the secondary smoking effects, it will show up in the system. So the precision to test for drugs has not been there. That is one of the reasons we have asked for more testing of this through the laboratories to try and develop better procedures. There

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has not been a lot of testing going on for actual prescribed drugs. Nor is there an understanding among operators of what tje effects of prescribed drugs are.

The CHAIRMAN. Well, let us discuss marijuana and cocaine, two frequently used drugs that impair the ability to function. Is it possible to test accurately for those drugs in the system?

Ms. GOLDMAN. It is possible to test for the presence of the drugs. What is not as easy to test for cocaine and marijuana, the rate at which it may be metabolized as it is with alcohol. It is not my understanding, and I would have to demur. There are people more experienced in this than I. In terms of the ingestion, the metabolizing of that has not been able to be done with the same precision.

The CHAIRMAN. Let us suppose that John Doe is an employee of a railroad, and John Doe uses marijuana. He goes to work on Monday morning, and he has used marijuana on Saturday night. Should that disqualify him from operating a train? Would a test detect the presence of marijuana in his bloodstream? Is it possible that if the test is positive he might nevertheless be qualified to operate the train?

Ms. GOLDMAN. In terms of picking it up, it is my understanding, and again depending upon the amount, that that could be picked up. What is not certain when you have tested and would concern me is the long-term effects, how much is there, and that does not seem to me yet to be able to be gotten with great precision in terms of what the effect is.

The CHAIRMAN. Let us suppose that there is a rule which says that if somebody shows up with X amount of whatever the chemical for marijuana is in the bloodstream, that person loses his license to operate a vehicle or some penalty is invoked.

Is drug testing sufficiently available to determine the effects of what is in the system at that time? Can we have safety rules or might we be penalizing someone for what they did more than 24 hours in advance? Should we restrict what an individual can do more than 24 hours before he goes on duty?

Ms. GOLDMAN. It is my understanding that there is not the ability to detect with precision the effects of the amount that has been ingested, and that becomes the problem yet to be determined. I think what we should strive for is an ability to determine what the deleterious effects are.

The CHAIRMAN. Are we in the position now where the best we can do is to conduct research on the quantity of drugs that can be in the bloodstream without impairing behavior? Or are we now in a position in your opinion where we should be developing standards prohibiting a certain volume of drugs in the bloodstream, for anyone operating a commercial vehicle?

Ms. GOLDMAN. Obviously, with the amount that would be ingested if it was being done immediately or used there, and the NTSB has not gone through an array to be able to tell what amounts X period of time before such operation would be.

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The CHAIRMAN. Do you think it is premature to develop standards for drugs in the bloodstream?

Ms. GOLDMAN. I don't think I am qualified to give you the precise values for that, but I think we should certainly work toward those standards with those who do have that kind of background.

The CHAIRMAN. Who has it?

Ms. GOLDMAN. I would presume people who are more involved in the medical research field, and that we depend upon when we go through the specifics for the individual accidents.

The CHAIRMAN. Given the overall problem of safety in the different modes, do you have a sense of the extent of the problem that is drug-related as compared to the alcohol problem?

Ms. GOLDMAN. That has not been measured, to my knowledge, again because you go back to the testing problems. There is not frequently the testing that is done to determine when the accidents happen, whether there has been drug involvement, and so we don't know the scope of it. The alcohol is most usually tested. The drug involvement is not usually tested. So we are without the information to make that comparison.

The CHAIRMAN. Would this be pure guesswork, or do you have a clear sense of it?

Ms. GOLDMAN. I believe it would be general guesswork, because there has not been the precise measurement as there has been in alcohol, and even there that becomes generalized.

The CHAIRMAN. What should be done? I think we have a problem as far as drugs are concerned. I would guess we are fairly sure we have a problem with respect to drugs. But, the extent of the problem and how best to deal with it are not clear.

Ms. GOLDMAN. I do not think it would be wrong to say we have the problem. Based upon even the testing that is done, and the fact of the considerable use of drugs in the society, then it becomes obvious that drug use is included in all modes of transportation. But, for precise measurements of how extensive it is, we do not have that measurement.

The CHAIRMAN. Well, I do not know that you have to be absolutely precise to develop safety rules.

Ms. GOLDMAN. We do not feel that either.

The CHAIRMAN. For example, consider speed limit rules. I would guess that it would be very difficult to say that 31 miles an hour is that much more dangerous than 29 miles an hour. I am not asking whether we know every detail, but the question is, do we know enough at this point to act?

Ms. GOLDMAN. I believe so.

The CHAIRMAN. Or do we just constantly draw very fine lines because the quest for knowledge goes on and on, and we are immobilized in the meantime.

Ms. GOLDMAN. The Safety Board has felt that we have enough information. That is the basis for which we make a lot of the recommendations we have. We have enough knowledge based upon the information we have to begin to set the standards and rules, and that is why we

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have proposed recommendations in the past and is the basis for our responses to the rulemaking.

The CHAIRMAN. I introduced a truck bill last November and the blood alcohol level that is mandated in that bill is .04 percent. The reason for .04 is that it is the same as the standard for airlines and railroads. When I asked at that time why not prohibit any alcohol in the bloodstream the answer was that the testing process isn't refined enough to make those fine distinctions. Is that correct or not? Is .04 the best we can do?

Ms. GOLDMAN. No, we don't think it is at the Safety Board. That is why we have asked for a standard that would be lower than that, and that which can be tested. It is not to say that we are not glad that the standard is finally getting there in areas where there hasn't even been one before. But, we believe, having seen what the effects can be, that there are smaller measureable amounts that diminish performance. That is why we have asked for the standard to be lower, that we would like to see that lowered, because the testing devices for alcohol are getting to the point that you can detect it lower than that.

The CHAIRMAN. So what do you think it should be, zero?

Ms. GOLDMAN. That is what we have called for at the Safety Board, yes.

The CHAIRMAN. Zero for all modes of transportation?

Ms. GOLDMAN. For all modes of transportation.

The CHAIRMAN. Do you think it is a good argument that airlines should be left out of this because there is no documented problem?

Ms. GOLDMAN. No.

The CHAIRMAN. Why not?

Ms. GOLDMAN. Well, the airlines have been the ones which have been the leaders up until recently in terms of having a standard for a period of time for abstinence prior to flight and based upon the fact that they are doing well. In fact, they have set a standard for the others and not should be left out.

The CHAIRMAN. You do not think that the argument holds that if it ain't broke, don't fix it?

Ms. GOLDMAN. I think that is exactly what the argument is that you are making, because the standard has worked. Why throw out the standard because it is working?

The CHAIRMAN. Well, thank you very much, Ms. Goldman, for your testimony.

[The statement follows:]

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STATEMENT OF PATRICIA A. GOLDMAN, VICE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. Chairman. I am pleased to be here this morning to present testimony on behalf of the National Transportation Safety Board on a transportation safety issue of vital importance, and that is the problem of alcohol and other drug use in all modes of transportation. That the NTSB has found alcohol and other drugs to be the cause of or involved in accidents is well and repeatedly documented. Our struggle to get recognition of this by the transportation industry is also well known.

What has escaped much attention is the confusing and inconsistent manner in which federal regulations dealing with alcohol and drug impairment are developed and applied in the various modes of transportation. While I will treat each mode in detail, let me briefly summarize the differences between modes:

In aviation the FAA rules require an abstinence period of 8 hours and a blood alcohol content limit of 0.04 percent for a pilot beginning a flight, and a ban on any drug use which is "contrary to safety."

In the highway mode, the Bureau of Motor Carrier Safety rules, which apply to all drivers for motor carriers involved in interstate commerce, state that there must be a 4-hour abstinence period before duty, and there is no blood alcohol level minimum limit; so therefore, presumably the driver may ingest any amount of alcohol which, in up to 5 hours before duty, will not bring the alcohol level to a greater amount than what State laws prohibit. Or, in other words, in most cases a 0.10—legally drunk. Further, some drugs are prohibited by the BMCS laws.

In rail there is no pre-duty abstinence period, but there is a 0.04 percent blood alcohol limit; and operators covered by FRA rules may not possess or use controlled substances or be impaired by them while on duty. There currently are no rules regarding light rail or subway, so presumably an operator, subject to any State laws, could consume any amount at any time prior to duty.

The Coast Guard rules prohibit operation of a vessel in a "negligent manner or while intoxicated," but no pre-duty drinking limits are prescribed nor is an intoxication level prescribed.

The lack of uniformity is obvious and there seems no justification; but there are still other problems. Let me be specific about the modes.

AVIATION

According to the new Federal Aviation Administration Rule on the use of Alcohol or Drugs which just effect on June 17, 1985:

"No person may act or attempt to act as a crew member of a civil aircraft (1) within 8 hours after consumption of a alcoholic beverage; (2) while under the influence of alcohol; (3) while using any drug that affects the person's faculties in any way contrary to safety; or (4) while having a 0.04 percent by weight or more alcohol in the blood."

The Safety Board has several concerns about this rule which we have voiced to the FAA. First, there is research while indicates that human performance is impaired by alcohol levels in the blood of less than 0.004 percent. In fact a recent study shows impairment at 0.015 percent. In addition, when combined with the effects of fatigue and/or altitude, the net effect on a pilot's performance of alcohol and these other stressors can be dangerous indeed.

Let me illustrate the problem of setting a pre-duty abstinence period. An airman or locomotive engineer could be drinking heavily (for example, a 180-pound person could consume 12 drinks in a 3-hour period) the day or night before going on duty. That could result in a BAC of approximately 0.16 percent. If the alcohol consumption were then suspended it would take approximately 8 hours for the person's blood alochol level to drop to the 0.04 percent level, and 11 hours to get to zero.

But to make matters even worse there are at least two recent studies of the so-called "hangover" effect in which performance decrements were demonstrated well after *all* alcohol had disappeared from the body! In fact, one study which tested 10 Navy pilots in simulators concluded "caution should be exerted when piloting aircraft 14 hours or less after ingesting similar (0.10 percent BAC) quantities of alcohol." The authors also stated that "use of alcohol prior to flights would increase the likelihood of a potentially fatal interaction between hangover effects and task difficulty when the unexpected emergency or non-routine procedure suddenly appears."

Beyond these issues are the problems inherent in enforcement of these regulations. The enforcement system proposed by the FAA depends on every State having the legal authority to arrest and test a pilot suspected of "flying while intoxicated" in order to trigger the FAA's review and enforcement process. The problem is that not all States have "flying while intoxicated" statutes (10 do not). Only eight States

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set BAC levels (2 at 0.04 percent; 2 at 0.05 percent; 4 at 0.10 percent) and as few as four States may have the authority to demand an alcohol test.

The NTSB has recommended that the FAA "issue a rule defining under the influence" as the lowest possible level consistent with the capability of testing equipment to measure any ingested alcohol. (A-84-45)

We understand that the latest generation of chemical testing equipment in use by police and forensic laboratories (e.g. Gas Chromatographs, Infrared Spectrophotometers) are capable of detecting alcohol in the body at below the .01 level. As to drugs other than alcohol, we have recommended that the Department of Transportation in conjunction with the FAA:

Review the existing research and literature in this area and institute research to: (1) determine the potential effects of both licit and illicit drugs, especially marijuana, in both therapeutic and abnormal levels, on human performance; (2) obtain correlations between toxicological findings of drug levels in blood, urine, and other specimens and various behavioral measurements; and (3) assess the effects of various drugs on the specific tasks performance by the operator in all transportation modes. (Class III, Longer-Term Action) (A-84-96)

Such research would hopefully provide the DOT with the information needed to determine which drugs are detrimental to safety and at what levels and to fashion their regulations and control measures accordingly.

As a further benefit this needed research will enable both the DOT and the NTSB to "fine tune" our accident investigation process to screen for specific impairing drugs so that their impact on transportation safety will be better understood.

MARINE

In maritime operations, operating a vessel in a negligent manner or while intoxicated, according to standards to be prescribed by the Secretary of Transportation, conveys a liability for a $1,000 civil penalty, or a fine of up to $5,000 and/or one year of imprisonment. The rulemaking action to develop and promulgate the necessary standards is still under development within the Department, but we understand that a 0.04 percent intoxication threshold for marine pilots, crew members and watch standers will be proposed.

HIGHWAY

Operating a truck or bus while intoxicated is addressed by both state and federal statutes and regulations: Title 49, Chapter III Part 390 of the U.S. Code (the Federal Motor Carrier Safety Regulations). The rule, which applies to all drivers for motor carriers involved in interstate commerce, says that:

(392.4)(a) No person shall operate or be in physical control of a motor vehicle . . . if under the influence of . . . a narcotic drug, or amphetamines . . . or any other substance, to a degree which renders him incapable of safely operating a motor vehicle.

(392.5)(a) No person shall consume an intoxicating beverage . . . or be under the influence of an intoxicating beverage within 4 hours before going on duty or . . . while on duty.

The various State laws, of course, also prohibit driving while intoxicated and define presumptive levels of intoxication at various blood alcohol concentrations (BACs). State and local police have primary enforcement responsibility in this mode, however, commercial trucking companies are increasingly becoming involved. According to representatives of several major trucking associations, a provision in the National Master Freight Agreement (Section III Article 35, Section A) [between the Teamsters Union and major trucking firms] will provide for immediate testing of employees suspected of being under the influence of alcohol and other drugs on the job, as well as drug testing (after 30 days notice) in conjunction with periodic Department of Transportation required physical examinations.

As the Chairman is aware, pre-employment drug screening is also becoming a common practice in the trucking—as well as other transportation industries.

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Until recently, the railroad industry prescribed and enforced its own alcohol and drug regulations. The so-called Rule G's adopted by each company prohibited crew members from operating trains while under the influence of alcohol or drugs. The penalty for violating Rule G is dismissal. Enforcement of Rule G is the responsibility of railroad management. Under the rule, fellow employees are required to turn in violators or be dismissed themselves. The Safety Board has found, however, that

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enforcement of Rule G has been far from uniform. We have seen instances where dismissed Rule G violators have been allowed back behind the throttle despite a continuing abuse problem.

Effective February 10, 1986, while a judicial review proceeds, new federal railroad regulations prohibit employees from using or possessing alcohol or any controlled substance while on duty, or being on duty "under the influence . . . or impaired by alcohol, or any controlled substance" or while "having 0.04 percent or more alcohol in the blood". In addition, the railroads are authorized to test employees for alcohol or drug impairment after accidents or where there is just cause. (This becomes mandatory on March 10, 1986.) Pre-employment drug screening is also authorized and will become mandatory on May 1, 1986.

Effective enforcement of these regulations will be directly dependent on the aggressiveness of railroad management and their ability to increase supervision of employees beyond present levels which, as I have observed, has in the past proved inadequate.

Mr. Chairman, we believe that there is no level of alcohol or other impairing drugs in the body that can be conclusively presumed "safe". The NTSB has recommended to the FAA and the FRA in both of their respective rulemakings on this issue, that the allowable level for air and train crew members should be none (no measurable alcohol) not 0.04 percent as these rules now specify. But I would go even further. There should be a common, consistent level of zero BAC specified for all commercial vehicle operators in all modes of transportation—not 0.04 percent in rail and air or 0.10 percent in highway and no specified level in marine.

Safety would also be served by a consistent specification of what impairing substances are addressed and a precise definition of what constitutes impairment. Achieving this needed consistency across modes should also be our goal.

Mr. Chairman, it is my urgent hope that tougher federal regulations will serve as an added deterrent to all those in our transportation system who continue to endanger the lives and property of others while impaired by alcohol and other drugs. The American people deserve no less than the most highly trained and clear headed men and women at the throttle of this nation's transportation system.

The Safety Board welcomes your efforts, Mr. Chairman, and those of this Committee toward achieving this vital goal.

Again, thank you for the opportunity to testify this morning.

The CHAIRMAN. Next we have a panel, John Riley, Administrator of the Federal Railroad Administration, Richard Jones, Deputy Administrator, Federal Aviation Administration, Richard Landis, Associate Administrator for Motor Carriers, Federal Highway Administration.

STATEMENTS OF HON. JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; RICHARD H. JONES, DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION; AND RICHARD P. LANDIS, ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS, FEDERAL HIGHWAY ADMINISTRATION

Mr. RILEY. Good morning, Senator.

Frankly, Senator, I cannot tell you with any degree of mathematical accuracy the extent to which substance abuse has invaded the railroad workplace. Until the adoption of our rule one week ago, FRA did not have authority to do post-accident testing, nor did we compel the carriers to do it.

As a consequence, we could confirm the presence of alcohol or drugs in an accident only when an autopsy revealed it after a fatal accident or when a train crew voluntarily consented to be tested after an accident, which is not the usual circumstance, but even with these limitations, we

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know that in the 10 years between 1975 and 1984, we experienced maybe 48 accidents with 37 fatalities, 80 non-fatal injuries, and more than $34 million in damage and environmental cleanup costs in which alcohol or drug use was a direct and contributing cause.

In 1978, a joint labor-management study of alcohol problems in the railroad industry concluded that somewhere between 14 and 23 percent of operating employees had either consumed alcohol on the job, come to work affected by it, or suffered from off the job problems that could affect their on-the-job performance.

Now, this is an estimate, and I have no way to confirm those numbers with any degree of accuracy, but I can say, Mr. Chairman, that over the seven-year period of 136 cases in which an autopsy was performed on a railroad employee who died in a fatal accident, in 16 percent of the cases, the autopsy revealed significant levels of alcohol or drug present in the bloodstream, and we have reached a point today where alcohol and drug use on the railroad is a principal, if not the principal cause of employee fatalities.

Mr. Chairman, that is why we had to act. That is why we implemented the rule that went into effect about a week ago, after I took office in November, 1983. FRA sponsored regional hearings in eight areas of the country to take testimony on what the people who lived with this problem daily thought should be done about it, and we took these hearings out into the field so we could hear from mid-level management and hear from the rank and file union officials who might not be able to come to Washington to testify here.

At the conclusion of those hearings, I attempted to forge a consensus between labor and management on a rule that would include both testing and a voluntary bypass provision. We didn't succeed in that, but I learned a great deal in the course of those discussions. I reached some fundamental conclusions that I would like to share with the committee, and these are as follows.

First, I am convinced that the alcohol and drug problem in the railroad industry for all the publicity associated with it is no better and no worse than the problem in any other basic industry. It is a societal problem. We are part of society. That is why we experience it.

I have seen it in my law firm. I have seen it in my own family, but what makes our industry different is the degree to which our problem exposes the public to danger. A lawyer who has got an alcohol problem may be disbarred, and he may mess up a file.

A machinist who has it may lose a finger in a shop, but a railroad operating employee with an alcohol or drug problem who takes that problem to the work place has enormous capacity to kill or injure fellow employees, passengers, or anyone unfortunate enough to live within close proximity to an accident. We saw that in Livingston, LA, and it really is that degree of public exposure that makes our situation different from nontransportation industries, and it is why we had to take the action that we took.

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Now, the rule that took effect last week is premised, it is based on two premises, first, that the public has an absolute right to be protected from the consequences of alcohol and drug use in the railroad and work place, period. Secondly, the equally important recognition, I think, that the problem of substance abuse is a uniquely human problem. It is one which is often a symptom of other difficulties, and to be effective a program, and I use program in the broadest term, because a program is a juncture of both rule and voluntary action, a program has to go beyond detection and penalties to provide incentives for self-help, peer support, and opportunities for rehabilitation.

Our rule, which has now been in effect for a week, has six parts, and let me briefly summarize them. First, our rule prohibits railroad employees from possessing, consuming, or being under the influence of drugs in the railroad workplace. Now, this is largely a statement of principle, because railroads uniformly have rule Gs, and the problem has not been lack of a rule, but the lack of an ability to determine with certainty when the rule has been violated, i.e. the lack of an ability to test.

The other half of the problem has been the absence of meaningful incentives for employees with problems to come forward voluntarily and seek help, but we do put a Federal rule in place so that we can have a premise on which to proceed with our various enforcement policies.

Second, we made some technical changes in our reporting requirements. FRA has been criticized, and I think validly so, for asking the wrong questions in some accident investigations. We only turned up evidence of alcohol and drug use, on the preliminary reports, in about a third of the cases where we ultimately confirmed it over the last 10 years.

We have changed our reporting requirement so that the railroads must now report any evidence of alcohol or drug use associated with an accident, and must inquire. In the past, they simply had to report it presence if it was a cause or the cause of the accident. Now, third, we have initiated a mandatory post-accident testing program following certain serious accidents, and, Mr. Chairman, that program is premised on my belief that there is a clear public interest in determining with certainty the actual cause of certain major accidents, and that goes all the way from the need to know to developing a good basis on which to craft safety rules and principles.

We require mandatory post-accident toxicological testing in accidents where there are fatalities, where there are hazardous material spills, and we also require in a certain carefully defined category of serious nonfatal accidents where human performance decrement is a probable cause. Among other things, the mandatory post-accident testing provision will give us a good data base to craft future policies, and we will either adjust the scope of this upward or downward in future years as our experience indicates that we need to.

Now, I have to make an important point here. We could have stopped here. This could have been the end of the rule, because these three provisions were the original NTSB recommendations on alcohol and drug use in the railroad industry. But we decided to go farther, be-

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cause we believe that if we stopped here and did not go to the heart of the issues of detection and self-help incentives, we would have a purely reactive rule. We would not get to the heart of the problem, and we would also need to revisit it at a future time, and let's face it, this is a tough, painful issue. It is not one that you should have to revisit often, so we added three more provisions.

The fourth provision of the rule requires mandatory preemployment drug screening of all new railroad employees. Only one company in the industry was doing this at the time we drafted the rule. More than half of them were doing it by the time the rule became effective, and by May 1 they will all be doing it, and it is premised on the simple assumption that it is not too much to ask somone who wants to operate a moving freight train to show up for a preemployment physical clean.

I think we are lucky in this regard, Senator. I don't think the drug problem in the railroad industry is anywhere near as severe as it is in many other industries, and that is because we are a declining employment industry. We have not done a lot of new hiring, and the drug problem, unlike the alcohol problem, tends to be somewhat generational, but we want to keep the problem at no worse than its current limits. That is why we have preemployment drug screening. For all of the good that these first four provisions do, provisions 5 and 6 are the keys to the rule. I call them the tradeoff provisions because they would have made a logical tradeoff in an agreement between industry and labor. It didn't happen, but it did through fiat, I guess, when the rule went into effect.

The fifth provision is a discretionary testing provision, and it allows management to test for reasonable suspicion. It authorizes reasonable suspicion testing, and the phrase reasonable suspicion is very carefully defined on the face of the rule, and to oversimplify for the purpose of our brief summary, reasonable suspicion constitutes three things, visual observations that would lead a reasonable person to suspect the presence of alcohol and drug use, two, violation of certain significant safety rules which are key to human performance, and three, accidents in which human performance is a probable cause, and I am oversimplifying that those are the three general categories that constitute reasonable suspicion.

The supervisor must be able to articulate and record the factors that led him to conclude he had reasonable suspicion. In the case of an alcohol breatholizer test, one supervisor can key the test. In the case of a drug test, which is somewhat more intrusive, two supervisors must have an articulated observation that keys the test, and at least one of those supervisors must have completed a standard course in drug symptom identification.

Now, there are a variety of other safeguards built into the testing provision. We have acceded to a labor request that the testing be done at an independent medical facility in the case of drug testing, and there is a strict chain of custody requirements. The bottom line, though, Mr. Chairman, is that if you do not have the ability to test and the railroad industry has not clearly had the ability to test, if it is part of the collec-

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tive bargaining process, management is inherently hesitant to act, because in every case it becomes your word against the employee's and it goes into the grievance process. It then becomes part of the omnibus collective bargaining settlements that occur at the end of the year on all grievance matters, and there is no one who represents only the public sitting in at that collective bargaining table.

And if there is a thing that I really became convinced of as I listened to the testimony and talked to the people about this without the authority to test even when there is a good likelihood that there is a problem employee aboard, management is simply hesitant to do anything about it. They are worried about it. The on-line supervisor does not want to have to go through that grievance process.

Now, the other half of our tradeoff is the so-called bypass provision, and what it does is simply this. It is preventive maintenance. It allows an employee who has a problem to come forward voluntarily and seek help. If he does, he will get treatment. He can bypass discipline, and his job will still be waiting for him when he is certified by the medical officer, able to return to work.

The purpose of this is to break the so-called conspiracy of silence that we hear about so often, or where one employee will not turn in another employee. That is just human nature. That is not a conspiracy. It is human nature. If the only sanction is firing even if an employee fears for his own safety, he will protect a friend. In this case, we create a place for that employee to go. We create a place where that employee can get help. It is a one-time right, and it cannot be elected after apprehension.

A final statement, Mr. Chairman. I see that I have run up to my limit. Anyone who thinks this problem can be resolved with a rule only does not understand the nature of the problem. A rule can do certain things. It can detect. It can deter. It can take a problem employee out of service, but a rule cannot create peer awareness. It cannot create a place for the problem employee to go. It cannot ensure early identification in the workplace. That can only be done by a voluntary program, and from the onset we have worked to establish a national voluntary program to go in lockstep with the rule.

Those postures you see there are symptomatic of it. And this is the training manual in cooperation with the BLE and the United Transportation Union and the Union Pacific Railroad, which originated the idea. These people do take Operation Red Block nationwide. It is on a majority of carriers, and we have trained over 2,000 midlevel management and labor officials in voluntary actions to resolve this problem over the last 2 years.

I am confident the program will save a lot of lives, and I frankly think, while it was the toughest issue we faced, it is probably the best thing we have done in the last years at FRA.

[The statement follows:]

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STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATION, FEDERAL RAILROAD ADMINISTRATION

Mr. Chairman, when I first appeared before this Committee in October of 1983, I identified the development of an effective alcohol and drug rule as Secretary Dole's highest priority, and my highest priority in railroad safety. Eight days ago that rule became a reality when it was implemented on a national basis. I appreciate the opportunity to come before this Committee to describe the rule, and share FRA's experience on what was unquestionably the toughest policy issue to come before the agency in my tenure.

Frankly, Mr. Chairman, there is no accurate way to measure the extent to which substance abuse has invaded the railroad workplace. Before the rule became effective last week, FRA lacked any authority to perform, or means to obtain, post-accident toxicological tests. With rare exceptions, we could confirm the presence of alcohol or drugs only when . . .

An autopsy revealed it after a fatal accident, or

A crew elected to submit voluntarily to testing.

Even with these limitations, we know that in the ten-year period between 1975 and 1984, alcohol or drug use played a causal role in, or materially affected the severity of, at least 48 accidents. Those accidents resulted in 37 fatalities, 80 nonfatal injuries, $20.4 million in railroad property damage, and $14 million in environmental clean-up costs. A 1978 survey conducted as part of a joint labor-management program concluded that between 18 and 23 percent of railroad operating employees had either consumed alcohol on the job or reported to work under the influence. While I cannot validate these percentages with any degree of certainty, the existence of a problem is clear. And it is equally clear that alcohol and drug use is linked to accident severity.

Alcohol was established as a causal factor in fifteen percent of all fatalities in train accidents over a recent three-year period. Autopsies available from a previous seven-year period reveal that 16 percent of the 136 employee fatalities tested positive for significant levels of alcohol or drugs.

Inherent in these statistics is the potential for a truly catastrophic accident involving passengers or hazardous materials. One need look no further than the alcohol-related derailment that occurred in Livingston, Louisiana on September 28, 1982, resulting in a hazardous material release that forced the evacuation of 2,700 persons.

Alcohol and drug related accidents have become one of the largest single causes of employee fatalities in the railroad industry, and that, Mr. Chairman, is why we had to act.

In 1983, and again in 1984, FRA held field hearings in each region of the country, to insure that mid-level management and rank and file employees—who lack the opportunity to come to Washington—could make their views heard. I also attempted to form a consensus between management and labor on a rule incorporating both testing and bypass, something that proved impossible to accomplish. In the course of those hearings and discussions I reached some fundamental conclusions that I want to share with this Committee.

I became convinced that the problem of substance abuse in the railroad industry is no worse—and probably no better—than in any other basic industry. It's a societal problem. I've seen it in my law firm, and in my own family. The difference, however, is in the degree of public exposure that results when substance abuse is brought to the railroad workplace.

A lawyer with a drinking problem may commit malpractice; a machinist using drugs could lose a finger. But a person operating a train under the influence of alcohol or drugs has a frightening ability to threaten the lives of fellow employees, passengers, and any member of the public unfortunate to live near the site of a major accident. It's that difference in the degree of public exposure that makes effective action so critical in our industry.

The rule which took effect last week is premised on two concepts:

First, recognition that the public has an absolute right to be protected from the consequences of alcohol and drug use in the workplace.

Second, the equally important recognition that the problem of substance abuse is a uniquely human problem, one which is often a symptom of other difficulties. To be effective, a program must go beyond detection and penalties to provide incentives for self-help, peer support, and opportunities for rehabilitation.

Consistent with this second premise, it is essential to recognize that a strong rule and an effective voluntary program are complementary—not mutually exclusive. A rule can detect, it can insure that a problem employee is removed from service. Ir

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the case of a nondependent user it may even deter. But a rule cannot rehabilitate, it cannot promote early identification, and it cannot create a peer environment conducive to mutual support. Only a voluntary program can accomplish these objectives.

That's why, more than two years ago, the Federal Railroad Administration invited labor and management representatives to join the agency in establishing a national voluntary program patterned on the highly successful "Operation Red Block" initiated by labor and management on the Union Pacific. The national program is now in place on a majority of the nation's major carriers, and it has made a difference. Training sessions have reached more than 2,000 mid-level management and union officials, and we hope to double that number in the year ahead.

Implementation of the new rule, in conjunction with the voluntary program, gives the railroad industry a truly comprehensive approach to substance abuse in the railroad workplace. The rule itself has six provisions, and they can be briefly summarized as follows:

First, the rule prohibits railroad employees covered by the Hours of Service Act from possessing, using, or being under the influence of alcohol or controlled substances while on duty. The rule also includes a "per se" prohibition on working with a blood alcohol concentration of .04 percent or more.

Second, the rule requires that the railroads make specific inquiry into alcohol and drug involvement in all train accidents and report any relevant information discovered. This rule, together with complementary changes to our reporting guide, will ensure that this important dimension of human performance is better reflected in the accident data.

Third, the rule requires post-accident toxicological testing after approximately 150 to 200 events each year. These events are identified by category: major train accidents, impact accidents, and employee fatalities. Post-accident testing will permit us, for the first time, to identify with reasonable precision the role of alcohol and drugs in those occurrences that involve the greatest threat to the safety of the public and railroad employees.

These three elements of the rule correspond to recommendations issued by the National Transportation Safety Board in 1983. We believe that these provisions are important. However, had we stopped there I believe that the rule would not have been effective, because it would not have addressed two primary problems in the railroad environment. First, the railroad industry did not have the clear right to test. If you cannot test, you very often cannot determine with certainty whether an employee has violated Rule G. At best, it come down to one person's word against another. The disciplinary action ends up in arbitration, often with insufficient evidence to judge the truth of the matter—or the case is compromised out with other grievances. This makes supervisors hesitant to act in situations where it must be one person's word against another's even if the supervisor is able to identify signs of impairment. That inability to determine violations with certainty has undermined the effectiveness of the railroads' Rule G.

The second fundamental failing in the system was the lack of any meaningful incentives for employees with problems to step forward voluntarily to seek help. If the only response to a Rule G violation is dismissal, employees will not bring peer pressure against those with alcohol and drug problems. If we had failed to create meaningful incentives for the employee to come forward on their own, or for fellow employees to apply peer concern, then the rule would have been purely reactive. We would not have been able to reach people until they caused an accident.

Had we concluded the rulemaking without addressing these problems, we would have had a rule in which it would have been necessary to revisit again in one or two years. Further, we would have been faced with a steady influx of active substance abusers into the railroad workforce as older employees retire—making these problems all the more critical. So we put three additional provisions in the rule.

The fourth element of the rule requires mandatory pre-employment drug screens. Some railroads have enjoyed a generally lower incidence of drug abuse in their employee ranks because of the older average age of railroad employees. This provision will help to ensure that the problem does not worsen as younger generations enter the railroad workforce.

The fifth element of the rule authorizes the railroads to require breath and urine tests for reasonable cause. This provision defines three situations in which testing may be required. The first is "reasonable suspicion." This refers to observations that the supervisor must be able to articulate, such as slurred speech or lack of coordination. The second basis for testing is the direct involvement of the employee in a reportable accident or injury, where the supervisor reasonably suspects that the employee's actions contributed to that accident or injury. The third basis for testing is violation of one of several enumerated operating rules that are crucial to safety.

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These are the kind of circumstances that clearly indicate a performance problem and call into question the fitness of the employee.

The final element of the rule is what we call the "bypass provision." It covers two situations. First, the employee steps forward and asks for help with a substance abuse problem. Second, the employee is in violation of Rule G on the job and a co-worker identifies that employee to a supervisor. In both cases the railroad is required to provide an opportunity for the employee to get help, rather than terminating that person's employment. This is a proactive provision. It gets the troubled employee out of the system and into treatment before that employee does personal harm or harms someone else. It ensures that the troubled employee will be treated fairly and will be returned to service when he/she no longer presents a threat to safety.

Note that the testing and bypass provisions will work together. The threat of detection will encourage troubled employees to seek help before they are caught. Co-workers will also be more likely to use the bypass provision to reduce their own exposure.

Mr. Chairman, our final rule contains many provisions designed to safeguard the rights of employees and to promote their respect for the integrity of this program. Although time will not permit me to describe them this morning, they are an important part of the rule and are analyzed in detail in the preamble.

The alcohol and drug problem is a real one, and the rule is a fair and effective response. I am absolutely convinced that railroad employees will live, and improve the quality of their lives, because of it.

The CHAIRMAN. Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

I welcome the opportunity to appear before the committee today to discuss for you today the approach we have successfully used within the Federal Aviation Administration to deal with the potential of substance abuse by airline pilots. As you are aware, Senator, despite our best efforts to build failsafe systems and to provide redundant safety features for transport aircraft, the aviation environment is such that it is unforgiving of mistakes.

There are times when a pilot must react to an emergency situation immediately, precisely and without error to avoid tragedy. It is with this requirement for a very high order of precise skill and judgment in mind, that we have established a very strict regulatory framework concerning the use of alcohol and other drugs by airline pilots.

In fact, as an outgrowth of the approach we have taken, cooperation and support within the aviation community, and a strong commitment to safety within the industry, and you made reference to this earlier, Senator, there has never been a scheduled passenger airline accident which could be attributed to alcohol or drug abuse.

The accident referred to by Mrs. Goldman was a charter cargo flight. Neverthless, as I will describe for you, we have continued to upgrade our regulatory requirements where improvements could be made, particularly with respect to alcohol use, which has been traditionally, at least within the airline industry, a greater cause for concern.

We intend, however, to continue to remain cognizant of possible drug use by the pilot population in order that we may take such appropriate measures as may be indicated.

I would like to take a moment to outline our basic regulatory requirements. The FAA operating regulations prohibit the use of alcohol by a pilot or crew member for 8 hours before serving as a crew member,

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and there might have been a little misunderstanding about this business about .04 of alcohol being okay or anything less than that. That is not the case. Zero alcohol level for an airline pilot is what is required. Any participation in intoxicating beverages for an 8-hour period prior to reporting for duty is reason for losing your license to fly.

The CHAIRMAN. But if they were drinking, say, 9 hours before the accident and then tested to .03, that would be sufficient?

Mr. JONES. That would be sufficient if they had been impaired.

The CHAIRMAN. No, but in other words, they would continue to fly at .03?

Mr. JONES. If they had been involved in an accident and their participation or use of alcohol had contributed to it, then they would not be allowed to continue to fly.

The CHAIRMAN. But then it is too late after they have been involved in the accident.

Mr. JONES. The .04 by weight rule is one for enforcement to demonstrate conclusively that the person is under the influence of alcohol. As you know, it has been difficult to define what being under the influence of alcohol is. One of the measures that we would use would be the .04 rule, irrespective of whether there had been intoxication or use of alcohol within what is known as the 8 hour bottle-to-throttle rule.

Now, to complement these regulations, we adopted new regulations last April which specified a blood alcohol level of .04 percent by weight as being evidence that the pilot is under the influence of alcohol. We have recently promulgated another rule which will be effective this coming April, which will require air carrier crew members to submit to blood alcohol tests when requested to do so by a local law enforcement official.

We also have in place medical regulations which make an individual ineligible for the issuance of an FAA medical certificate, and you have to have the medical certificate in order to exercise the privileges of a license to act as a pilot, if that individual has an established medical history or clinical diagnosis of drug dependence or alcoholism, unless there is satisfactory evidence of sustained total abstinence from alcohol for at least the preceding 2 years. Airline pilots, at least the pilot in command, are required to undergo medical tests every 6 months. Co-pilots, under what is known as the second class medical certificate, must be examined each 12 months. And as I have indicated, we have a comprehensive framework of regulations intended to promote safety through strict prohibitions against the use of substances which might adversely affect the pilot's performance.

What we learned in the 1970's, however, was that since we got no reports, or very sparse reports, of alcoholism within the pilot population, we wondered why that was. We figured that airline pilots were perhaps as susceptible as the general population to alcoholism, yet we in the FAA were getting no reports of such alcoholism. We learned that the stigma would be so great for a pilot either reporting himself or telling on another pilot because he would lose his livelihood. Not only

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would he lose his position in the community, but he could no longer work as an airline pilot, and so for that reason it was kept in the closet, and this led to a different approach in the FAA whereby a pilot with strict monitoring and rehabilitation could admit that he had a drinking problem and could return to air carrier pilot duties, and the program has proved very successful, as I shall describe.

The approach was adopted by the FAA in the mid-1970s and it was to permit the return of airline pilots following a relatively short period of time after release from an in-patient facility, perhaps as little as three months, but under strict surveillance and with intense rehabilitation efforts.

The process starts when a pilot is first identified as having an alcohol problem and acknowledges that to be the case. The pilot is then placed in a treatment program, typically on a 1 month long in-patient basis, and then after receipt of his initial treatment, the pilot must apply to the FAA for approval to return to flight status.

We require that a responsible medical source, for example, the airline medical department of this airline or the medical representative of the pilot union, sponsor the pilot's request for certification. He can't come in on his own. He has to have some support from his employer or from his peer group. Further, the pilot must be checked by experts, identified by the FAA, who will screen not only for underlying medical problems which have resulted from the alcoholism, but review the progress of the rehabilitation as a source independent of the treatment facility, and these experts can develop a baseline for continued monitoring of the recovery process and assist in judgments concerning the degree to which surveillance can be relaxed.

I should note at this point that the continued medical certification of the pilot is based upon total abstinence. The pilot is then carefully monitored for at least 2 years by the medical sponsor who is required to report each 6 months to the FAA on the status of the pilot rehabilitation. As part of the overall monitoring of the pilot, a peer representative of the pilot and the direction of flight operations, in other words, his boss at the airline, they are responsible to make monthly reports as to the progress of this particular pilot, and in addition the pilot must continue treatment on an outpatient basis which provides a further source of periodic reports to the medical sponsor as well.

Over 600 pilots have been returned to flight duties under this program, and we have experienced, I think, a phenomenal success rate of slightly better than 91 percent with success defined as no relapses over a 2-year period following the return of medical certification. It has been of great interest to us that the strongest supporters of this program and the ones who go around preaching about it——

The CHAIRMAN. Do you believe that?

Mr. JONES. Do I believe what, sir?

The CHAIRMAN. The 91 percent.

Mr. JONES. That is a fact. Statistically better than 91 percent of the ones that have gone through this program have successfully completed the program. Yes, I do believe that.

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The CHAIRMAN. That is an amazing fact.

Mr. JONES. It is. That is why we think it is noteworthy, and we hold it up as a model.

The CHAIRMAN. You do not think anybody is fooling you?

Mr. JONES. No. No, I certainly don't. I think the nature of the airline pilot job is such that if a pilot is not able to hold up his end of the duties—and believe me, the duties sometimes are intense. I was an airline pilot for 25 years before coming to work at the FAA, and if you can't be relied on, the other pilots don't want to fly with you, and so there would be an ostracism. You would be an outcast. Either you are there ready to go to work or you don't make it. So, yes, I do believe those figures——

The CHAIRMAN. And yet you have just told us people do not want to rat on each other.

Mr. JONES. No, I do not believe I said that, Senator. What I——

The CHAIRMAN. I thought you said that people were not turning each other in because there was a stigma to turning people in.

Mr. JONES. Prior to the time of this rehabilitation program that may have been one of the reasons why we did not have as much success as we have had in recent years on this point.

So, in closing, Mr. Chairman, I would reiterate that we have been concerned for many years about the need to avoid the potential adverse impacts of substance abuse on aviation safety, and we have taken a number of measures to address the issue. As earlier noted, these efforts have proven worthwhile and have assisted the industry in compiling an outstanding record in this area.

We continue to be concerned, and I don't want to suggest that we are relaxed at all. We continue to be concerned about the potential for such problems, and if we identify further areas needing improvement, we will not hesitiate to take such additional steps as may be necessary. Thank you, sir.

[The statement follows.]

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STATEMENT OF RICHARD H. JONES, DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

Mr. Chairman and Members of the Committee: I welcome the opportunity to appear before the Committee today to describe for you the approach we have successfully used within the FAA to deal with the potential of substance abuse by airline pilots.

As the Members of the Committee are aware, despite our best efforts to build fail safe systems and to provide redundant safety features in transport aircraft, the aviation environment is nevertheless one which can be unforgiving of mistakes. There are times when a pilot must react to an emergency situation immediately, precisely, and without error, to avoid tragedy. It is with this requirement for a high order of precise skill and judgment in mind that we have established a strict regulatory framework concerning the use of alcohol or other drugs by air carrier pilots.

In fact, as an outgrowth of the approach we have taken, cooperation and support within the aviation community, and a strong commitment to safety within the industry, there have been no accidents in United States scheduled passenger service that have been determined to be related to alcohol or other drug usage.

Nevertheless, as I will describe for you, we have continued to upgrace our regulatory requirements where improvements could be made, particularly with respect to alcohol use which has been traditionally a greater cause for concern. We intend, however, to continue to remain cognizant of possible drug use by the pilot population, in order that we may take such appropriate measures as may be indicated.

I would like to take a moment now to outline our basic regulatory requirements for you. FAA operating regulations prohibit the use of alcohol by a pilot (or crewmember) for 8 hours before serving as a crewmember. They also prohibit serving as a pilot (or crewmember) while under the influence of alcohol or while using any drug (whether an illicit drug or not) which affects the pilot's capabilities in any way contrary to safety. To complement these regulations, we adopted new regulations last April which specify that a blood alcohol level of .04 percent by weight is evidence that a pilot is under the influence of alcohol. We have recently promulgated another rule, to be effective this April 9, which will require air carrier crewmembers to submit to a blood alcohol test when requested to do so by a local law enforcement official.

We also have in place medical regulations which make an individual ineligible for the issuance of an FAA medical certificate, necessary to serve as a pilot, if that individual has an established medical history or clinical diagnosis of drug dependence or alcoholism, unless there is satisfactory evidence of sustained total abstinence from alcohol for at least the preceding two years. Airline pilots are required to undergo medical certification every six months; copilots are required to undergo such certification annually.

As indicated, we have a comprehensive framework of regulations intended to promote safety through strict prohibitions against the use of substances which might adversely affect a pilot's performance. What we learned in the 1970's, however, was that an inflexible approach to applying these regulations was probably frustrating the receipt of safety information by the FAA. More specifically, we were getting few reports of alcohol abuse by air carrier pilots. This concerned us, and we concluded that it resulted from fear on the part of pilots and other crewmembers that either seeking help for themselves or reporting others for alcoholism would cause the FAA to revoke their certificates, and end their means of livelihood. This led to a different approach by the FAA, under which a pilot, with strict monitoring and rehabilitation, could return to air carrier pilot duties. That program has proven highly successful, as I will describe.

The approach, adopted by the FAA in the mid-1970's, was to permit the return of airline pilots to flight duties within relatively short periods of time after release from an inpatient facility—perhaps as little as three months—but under strict surveillance and with intense rehabilitation efforts.

The process starts when a pilot is first identified as having an alcohol problem and acknowledges that to be the case. The pilot is then placed in a treatment program—typically a month long program on an in-patient basis. After receipt of this initial treatment, the pilot must apply to the FAA for approval to return to flight duties. We require that a responsible medical source (for example, an airline medical department or the medical representative of the pilots' union) sponsor the pilot's request for certification. Further, the pilot must be checked by experts identified by the FAA, who will screen not only for underlying medical problems which have resulted from the alcoholism but review the progress of rehabilitation as a source independent of the treatment facility. Moreover, these experts can develop a baseline

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for continued monitoring of the recovery process and assist in judgments concerning the degree to which surveillance can be relaxed. I should note, at this point, that the continued medical certification of the pilot is based upon total abstinence.

The pilot is then carefully monitored for at least two years by the medical sponsor, who is required to report each six months to the FAA on the status of the pilot's rehabilitation. As part of the overall monitoring of the pilot, a peer representative of the pilot and the pilot's flight operations supervisor are responsible for monthly reports to the medical sponsor on the pilot's progress. In addition, the pilot must continue treatment on an outpatient basis which provides a further source of periodic reports to the medical sponsor as well.

So far, over 600 pilots have been returned to flight duties under this program. We have experienced a success rate slightly better than 91%, with success defined as no relapses over a 2-year period following the return of medical certification. Interestingly, recovered alcoholic airline pilots have become the strongest supporters of this rehabilitation program and the FAA's stringent monitoring requirements.

In closing, Mr. Chairman, I would reiterate that we have been concerned for many years about the need to avoid the potential adverse impacts of substance abuse on aviation safety, and have taken a number of measures to address this issue. As earlier noted, these efforts have proven worthwhile and have assisted the industry in compiling an outstanding record in this area. We continue to be concerned about the potential for such problems, however, and, if we identify areas needing improvement, we will not hesitate to take such additional measures in the future as may be determined necessary to protect the flying public.

That completes my prepared statement, Mr. Chairman. I would be pleased to respond to questions you may have at this time.

The CHAIRMAN. Thank you, Mr. Landis.

Mr. LANDIS. Thank you, Senator. It is very nice to be here before this committee and to give you an overview of the Federal Highway Administration's activities in drunk and druged driving.

What I would like to do is review very briefly the delegated authority that is given the Federal Highway Administration by the Secretary of Transportation for the establishment of rules and regulations applying to drivers of commercial vehicles. Those rules center basically on driver qualifications and further the operational requirements for those drivers.

Those rules apply throughout the nation's highway system, however, I think it is important to recognize that in the highway environment, most of the enforcement is done at the State level. At this point the Federal regulations really do go far beyond just the Federal scope in that they have been adopted verbatim in 33 States now, with other States in the process of adopting regulations that mirror the Federal regulations.

The regulations have been promulgated to follow a pattern, and that pattern deals first of all with qualifications, followed by the prohibitions, and then there are a set of sanctions, if you will. The qualifications are designed to get at the individual before he gets out on the road. Right now the rules require that each operator of a motor carrier be medically certified to do so. In that medical certification, a review is done by the certifying physician, and a determination is made concerning dependency upon alcohol and drugs. A finding or a clinical diagnosis of alcohol or drug dependency is grounds for disqualification. Actually it is grounds for the medical examiner not to issue a certificate of medical qualification.

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Further, with respect to qualifications, upon employment drivers are required to report to their carriers histories of accidents and histories of violations of the law. This would include violations of laws prohibiting the operation of motor vehicles while under the influence of alcohol and/or drugs.

I recognize that this gets into some of the problems that we have discussed in the past with the multiple driver's license issue, that not all of this information is reported to the carrier. However, I think there is now greater awareness on the part of the carriers to do their annually required checks, which is a review of the records, and to determine if their drivers are committing those kinds of violations that are in the alcohol and drug abuse areas.

In the prohibitions area, the regulations center on the on-duty use of alcohol and drugs; further, the carriers are not permitted to allow employees to use alcohol while on duty. That is not just driving. The on-duty status can include co-driving, or it can include actual operation. No person may consume or be under the influence of alcohol within 4 hours of reporting to duty. That 4-hour rule was part of rulemaking, I understand, several years ago.

The original proposed time limit was 8 hours, which I think was mentioned by the other modes. The rulemaking process did sort out with a 4-hour requirement because of the give and take, I guess, that developed during that process. Possession, consumption, and influence while on duty is prohibited. This is also backed up by carrier requirements that the employee cannot be permitted to consume, possess, or be under the influence.

The sanction requirements center on a disqualification process from interstate and foreign commerce. Conviction of an offense, or several offenses, particularly driving under the influence of alcohol or drugs is a disqualification for 1 year. Subsequent offenders face the sanction of a 3-year disqualification.

Disqualification for revocation of a license also follows. For instance, if an operator's license is suspended or revoked in a given State for violation of a State statute, he is then disqualified from operation in interstate commerce. Again, one of the areas that come into play in this particular sanction area is the multiple driver's license problem. There are numerous examples where operators have been suspended, gone to another State, obtained a license and sidetracked this process.

Current action under way in the Federal Highway Administration is a rule published on October 1 which goes to a new direction on the drug rule and the medical standards area. As I mentioned previously, the rules currently require no dependency upon alcohol and drugs.

The proposal that is out now proposes that we prohibit the use of drugs and alcohol, and this would be determined by the medical physician during the time of medical qualification. Thus far we have 214 commenters to the docket, and by far the majority of those favor that direction of the rulemaking.

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We believe this is part of a management tool that carriers can use to get at this problem, and I believe that you will have some other testimony from the industry showing that the awareness by management of carriers is increasing in this drug testing area at the onset.

Another current action underway is the Motor Carrier Safety Assistance Program. This is the activity of increasing the roadside inspections by the states throughout the country. I think this clearly increases the level of inspections and allows greater contact with the drivers in the operational mode as opposed to the paperwork exercise before. As those inspections increase, the inspectors will be able to look at and talk to the drivers in the roadside environment.

An action that is now under consideration by the Department is in the hazardous materials area, which would require mandatory drug screening for operators of vehicles transporting hazardous materials.

The CHAIRMAN. What does that mean? What does the mandatory screening mean?

Mr. LANDIS. Mandatory screening would involve a chemical or a blood test prior to employment or prior to operation, to determine the lack of drugs.

The CHAIRMAN. Do you mean for each time a person took a truck out on the road?

Mr. LANDIS. Well, it is under consideration. I would imagine that it would be prior to initial employment in that area, but it is still subject to review. This drug screening will be the first time that the preoperation drug screening area has been utilized in the Federal regulation of highway operations.

Finally, I would like to say that the enforcement is primarily being accomplished at the State level. Our interests and desires are to establish regulations which can be used at the State level, and we have taken advantage of the relationship to the highway environment of both the truck and the passenger car. I think all of the work that has been done over the years in increasing the awareness of alcohol abuse and changing the social attitude toward the drunk and drugged driver, is a natural carryover into the commercial vehicle operator environment.

[The statement follows:]

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STATEMENT OF RICHARD LANDIS, ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS, FEDERAL HIGHWAY ADMINISTRATION

I am pleased to appear here today on behalf of the Federal Highway Administration (FHWA) to discuss the issue of alcohol and drug abuse in the commercial motor vehicle sector of the transportation community. This hearing affords an excellent opportunity to focus attention on a significant problem confronting motor carriers, drivers of commercial motor vehicles and the traveling public.

AUTHORITY

The Secretary of Transportation has delegated to the FHWA the statutory authority to regulate the qualifications of commercial vehicle drivers and the safety of trucks and buses operating in interstate and foreign commerce. This authority includes the safety provisions of title 49, United States Code, as well as the Motor Carrier Safety Act of 1984. Pursuant to these statutes and FHWA has promulgated rules and standards pertaining to motor carrier companies and commercial vehicle drivers to cover preemployment checks, periodic physical examinations, disqualification criteria for use or possession of alcohol or other drugs, including driving traffic record check, previous employment record, and validation of driver experience claimed, and the transportation of contraband.

THE RULES

The Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Parts 390-399, establish special requirements for motor carriers and drivers engaged in interstate and foreign commerce. The effect of these rules reaches well beyond interstate and foreign commerce because the regulations have been adopted by thirty-three (33) States for application to intrastate carriers and drivers. Moreover, many carriers establish their own rules which are more stringent than the minimum Federal requirements.

In order to drive in interstate or foreign commerce, an individual must be examined by a physician to determine medical qualification of the driver. Any individual who is clinically diagnosed as dependent upon alcohol or a Schedule 1 drug or other substance (as defined by the Drug Enforcement Administration), an amphetamine, narcotic, or any other habit-forming drug, is not physically qualified to drive, and a medical physician may not certify such an individual as qualified to drive. Drivers are required to be medically recertified every 2 years.

Driver applicants must also furnish information to the motor carrier about all accidents in which the applicant has been involved in the preceding three years, all violations of motor vehicle laws or ordinances (other than parking, but including drunk or drugged driving) of which the individual was convicted or forfeited bond during the preceding 3 years, and all information related to a denial, revocation, or suspension of driving privilege. The regulations also require the motor carriers to annually review the driving record of each of its drivers and for each driver to sign a certificate stating his record of violations for the year.

Drivers who have had their licenses revoked or suspended are disqualified from operating in interstate or foreign commerce until their privilege to drive has been restored. Some drivers now carry more than one license to spread out their record of violations to lessen the chance that any one license will be revoked. This has been a major issue for the Department and we are looking at ways to address the problem of multiple licenses.

Further, a driver who is convicted of (or who forfeits a bond) certain offenses is disqualified for 1 year from driving in interstate or foreign commerce, if it is a first offense. These offenses include: operating a motor vehicle while under the influence of alcohol, a Schedule I drug or other substance (as defined by the Drug Enforcement Administration), an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivation of a narcotic drug. Repeat offenders are treated more harshly with a 3-year disqualification.

The FMCSR further prohibits the operation of a commercial motor vehicle by an individual using alcohol or other drugs. Section 392.4 provides that no driver shall be on duty (not just driving) and possess, be under the influence of, or use any Schedule 1 drug or substance, narcotic or nay derivative thereof, amphetamine or any formulation thereof, or any other substance which renders a driver incapable of safely operating a motor vheicle. A motor carrier that allows a driver to go on duty after using alcohol or drugs is also in violation of the regulations. The provisions of this regualtion do not apply to a driver who possesses or uses a drug under the in-

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structions of a physician who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

No person may consume an intoxicating beverage, or be under the influence of an intoxicating beverage, within 4 hours before going on duty or operating a vehicle. Commercial vehicle drivers are prohibited from possessing or consuming an intoxicating beverage, or being under the influence of an intoxicating beverage, while on duty or operating a vehicle. Motor carriers are prohibited from permitting or requiring a driver to operate a vehicle if the driver appears to have consumed an intoxicating beverage within the preceding 4 hours.

The FHWA is presently conducting a proposed rulemaking to revise the drug rule and medical standard to prohibit the simple use of drugs as contrasted to the present requirement of a clinical diagnosis of drug dependency. This rule was published on October 1, 1985 and some 214 commenters have submitted their views to the docket. Our prelimiary review of the docket found an overwhelming majority of commenters in support of the proposed tightening of the rules. The commenters included States, physicians, motor carriers, trade associations, and individuals.

USE IN THE INDUSTRY

A review of the studies on the issue of alcohol and drug use on the public highways reveals that bulk of the literature relates to automobile drivers rather than commercial vehicle drivers. However, the resulting trends can reasonably be projected to include the commercial drivers. For instance, studies have shown an increased incidence of drug presence in highway collisions.

A little over 2 years ago, the FHWA's Bureau of Motor Carrier Safety (BMCS) conducted a review of recent alcohol studies. From this we determined that in fatal crashes the percentage of commercial vehicle drivers with measurable blood alcohol had jumped from a historical 3–5% to just above 14% in 1980.

A recent report published by the Insurance Institute for Highway Safety noted that more than 25 different drugs were found in the blood of young California men (age 15–34) who were killed while driving noncommercial motor vehicles. One or more kinds of drugs were found in the blood of 81% of the 440 drivers tested. Eighty-seven percent (87%) of the drivers with one drug in their blood were found to have been responsible for their crashes, while 96% of those with two or more kinds of drugs evident were found at fault in their accidents.

While we are not aware of any documented clinical studies discussing the use or abuse of drugs by drivers of commercial vehicles, we have found many reports based on individual carriers' experience in the preemployment drug screening of prospective new employees.

For example, a laboratory which performs drug screening for several major carriers indicates that it has found that 13–18% of drug screenings done for reexaminations were positive. This has occurred even where carriers have given employees 30–60 days advance notice that the drug screening was to be conducted.

Another carrier which did drug screening on 863 persons (including current employees, casuals, and job applicants) found tht 118 of the tests (17%) were positive. A carrier screening applicants in a major Midwestern city found that 47% of the applicants had positive drug screens.

In a separate incident, the safety director of a motor carrier, while making spot checks of his company's tractors, found evidence of marijuana use. An ensuing in-depth investigation resulted in the discharge of 50% of the drivers at the terminal involved.

FUTURE ACTIONS

We believe our current rulemaking will give motor carrier management new tools to screen out individuals who abuse alcohol or other drugs and who use drugs illegally. We do not want these people operating commercial vehicles on our highways.

Moreover, the significant increase in roadside inspections conducted by the States under the Motor Carrier Safety Assistance Program as authorized by the Surface Transportation Assistance Act of 1982 will go a long way towards intercepting and removing drivers operating vehicles while under the influence of drugs or alcohol.

Finally, the requirement in the new Motor Carrier Act of 1984 to review, revise, and readopt the Federal Motor Carrier Safety Regulations provides an opportunity to reexamine the regulatory standards currently on the books, and strengthen them where required. As an example, DOT is considering the feasibility and effectiveness of a mandatory drug screening requirement for drivers of hazardous materials and cargo tanks.

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Since enforcement of the laws against highway drug and alcohol abuse is primarily a State function, we do not believe more legislation at the Federal level is needed unless it specifically makes the job for State and local officers easier. For example, we are examining ways to assist the States in improving licensing, screening, and disqualification systems for drivers in instrastate commerce. Some of the ways include conduct of reserach into improved licensing methods, upgrading the National Driver Register, and promoting State adoption of administrative disqualification of unfit drivers as it done at the Federal level.

Again, we appreciate the opportunity to express our views, and we gladly offer our assistance to the Committee and its staff in working out new solutions to our current drug and alcohol abuse problems in the motor carrier industry.

That concludes my prepared statement. I will be pleased to answer any questions you may have.

The CHAIRMAN. Mr. Landis, in most States the maximum blood alcohol level allowed for people who drive anything is .10. In railroads and in the airlines the standard is .04.

Would you favor a tightening of the standard, to .04?

Mr. LANDIS. We are now doing an extensive review of a legislative proposal before us that talks about .04 and have not yet come to a conclusion on that.

I might say that the reason I think that the .10 has stood the test of time is because of the highway environment we are dealing with, 5 million plus operators, and the .10 has received general acceptance.

I think it is only recently that true attention has been brought to the greater importance and the greater responsibilities of the commercial vehicle driver, and that awareness obviously is across the board.

The CHAIRMAN. You are, however, not in a position now to take a position one way or another on that?

Mr. LANDIS. No, sir.

The CHAIRMAN. Mr. Jones, your testimony related to airline pilots.

Mr. JONES. That is correct.

The CHAIRMAN. Does the same theory operate with respect to, mechanics, those who fuel an airplane, or other people who work for the airlines?

Mr. JONES. We have sort of a blanket rule, Senator, that anything that would derogate safety would not be allowed, and anytime an employee of an airline where you have to do anything in a safety-related fashion, that would be prescribed by the regulations.

The CHAIRMAN. Does that include the use of alcohol or drugs while doing your work?

Mr. JONES. We have no regulations on that precise point.

The CHAIRMAN. So for a mechanic or somebody that fuels the plane there are no specific rules regarding the use of drugs or alcohol?

Mr. JONES. Well, the work place environment would be such that there would be supervisors, there would be management that would see that that would not happen, or if it did it would be an isolated instance.

The CHAIRMAN. That would be for management to determine?

Mr. JONES. That is correct.

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The CHAIRMAN. Now, I want to pose the question of testing to each of you. With respect to people on the highways, Mr. Landis, there are ample opportunities to observe and to test, I suppose.

When a trucker pulls into a weigh station he is observed by highway patrol officials. When he is driving his truck on the highway he can be observed doing his work. Somebody who is flying an airplane is not observed. You do not have a law enforcement person who can say pull over to the curb when you are 35,000 feet above the ground. The same is true with somebody who is operating a train.

John Riley has testified that under his new rules there are some bases for testing. I have to say that they are pretty tight: First, if you have killed somebody; and second, if you have been involved in a major accident, or if your supervisor reasonably suspects alcohol or drug use. Two supervisors have to concur. Is that just for drugs?

Mr. RILEY. That is just in drugs.

The CHAIRMAN. One of them has to be specially trained?

Mr. RILEY. That is correct.

The CHAIRMAN. And in the airlines, as I understand it, there is no testing other than the mid-year physical?

Mr. JONES. The FAA has air carrier inspectors who ride regularly in carriers and on jump seats, and we would be in a position to observe the abnormalities. Now, they are not making physical tests or screenings as such, but we do have an active observation program underway.

The CHAIRMAN. How often do people show up to ride with you if you are an airline pilot? How often would it happen?

Mr. JONES. It would vary; several times a year, unannounced arrivals.

The CHAIRMAN. I know nobody likes to be tested. You hear professional athletes complaining about drug testing. If Peter Uebberoth makes the argument that baseball players should be tested for drugs and alcohol, why should it not be a very frequent occurrence for locomotive engineers or airline pilots or airline personnel to be tested?

Why do you have to have these highly legalistic standards in the railroad business, and why do you have no regular testing at all in the FAA? I do not understand it.

It seems to me that it is a clear threat to the public if people operate airplanes, trucks, busses, and trains while they are drunk or while they are under the influence of drugs.

I suppose there is a balance between individual privacy and the hundreds of people who are possible victims.

That balance, I think, comes out very clearly in favor of public health and safety. So why should there not be spot checks? You just cannot do it, I suppose?

Mr. RILEY. Senator, let me answer that question in two respects.

First, our rule does authorize very frequent testing in the railroad industry. We have crew change points approximately every 100 miles. That is where the crews come on and come off. Supervisory personnel are at all of those crew change points and have an obligation to inspect and look at the crew before it goes on duty, so we literally have a system that can authorize management on reasonable suspicion to test every 100 miles if they choose to do so.

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Why do we spell these things out in strict requirements? Because one has to pass constitutional muster on these rules. I have been in court since November when I first issued the rule. We have won—initially we lost a temporary restraining order in the trial court level. We then won summary judgment in the suit. I lost a stay before the appellate court. I went to the Supreme Court, and I got the stay overturned. We are now before an appellate court that is divided on the stay.

I think that just isolates how careful one must be to define these distinctions if these rules are going to pass constitutional muster.

I do not agree at all with the characterization of this as infrequent testing. Certainly the mandatory testing only comes about after an accident, but that is precisely why we did not stop at the NTSB recommendations.

Any manager who has a reasonable suspicion that an employee is impaired or has consumed alcohol before coming on duty can in fact test, and if, when we hold our oversight hearings 12 months from now on the first year, the rule, we find out that it has not done the job, we will go further.

The CHAIRMAN. You cannot test if he has some special training task?

Mr. RILEY. Not on the alcohol side. On the drug side there is a reason for that. I think your questions were right on point to the last witness. It is a very, very difficult area. In fact, we considered doing just an alcohol rule and not a drug rule because of it.

The drug testing course runs about 6 hours 3 at an absolute minimum. As an industry, we have been giving that course nationwide for the last year to prepare the industry for this rule. There have probably been several thousand midmanagement people who have now taken that course. It is a very important course.

The CHAIRMAN. They are there for the crew changes every 100 miles?

Mr. RILEY. The management is there for the great majority of crew changes.

The CHAIRMAN. The people that have had this special training?

Mr. RILEY. Yes, absolutely. What the railroads are doing is training the people who are at these locations, and this training is going to be going on over the next couple of years. I do not think half of the industry supervisors have had the training to date, but I believe they will have within a year to 18 months.

I have to say that I do not have sympathy for those who do not want to be tested. I have to say that I really do not. I think that asking someone to undertake a breathalyzer test every couple of years or perhaps a year end test, if that keeps your fellow employee or you alive, is not a lot to ask. It could happen to any of us on the highways.

What we have done on the drug side is recognize that you do have to have more than common knowledge to recognize a drug sympton. Normally a person who has been through that test will see the sympton where you or I might not see it. That test will increase the number of cases in which a supervisor will find himself wanting to test, and it is going to take a couple of years to train enough of them but we will get it done.

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The CHAIRMAN. Mr. Jones, why should there not be regular testing of airline personnel?

Mr. JONES. Well, we are looking at that very question. As a matter of fact, a petition for rule making has been submitted to the FAA, and we have that matter under advisement. I would not want to prejudge which way we would go, but I would suggest to you that in the environment—and you talked about an airplane flying along at 35,000 feet with nobody watching, that really is not the case.

There are lots of people watching. There are lots of people watching those crew members from the time they show up at the airport to go to work. They go in for weather briefings. They see the chief pilot. They see the crew scheduler. They see the other crew members. Again, I am not saying that there is not a problem, but we are watching very closely, and when we see one—again, I do not want to prejudge this rule making—we will certainly act promptly.

We, to this moment, have not obviously—or let me say, obviously we have not seen a problem because we have not moved, but we have your points in mind.

The CHAIRMAN. Well, I cannot tell whether you are saying you do not have a problem or that you do in fact have a problem.

Mr. JONES. I do not know that I can, in my position, while we have this rulemaking, but I suggest to you as we said earlier that there has never been an airline passenger scheduled accident attributed to even alcohol, much less drugs. The incidence of drug use amongst airline pilots, as far as any records are concerned, is nonexistent.

The CHAIRMAN. Would you know?

Mr. JONES. I think he would. I think in the cockpit you could tell when a person was not playing with a full deck.

The CHAIRMAN. After the plane has crashed and everybody has been incinerated.

Mr. JONES. Well, that has not happened. I cannot guarantee that it will not, but it has not happened in the 20 or 30 or 40 years.

The CHAIRMAN. Do you know that? Do you know that for a fact?

Mr. JONES. Toxicological tests are made following fatal accidents, and we do not have any indication that there was any drug connection with any of the accidents that we are familiar with.

The CHAIRMAN. The ground crew, too, is just perfectly fine?

Mr. JONES. I am not prepared to say they are perfectly fine. It is a matter of concern. It is for our country across many disciplines. We in the FAA are watching it. We are monitoring it, and when we feel that there is a time for a testing or screening program after looking at all of the aspects of it, then we will act accordingly.

The CHAIRMAN. Senator Gore?

Senator GORE. No questions, Mr. Chairman.

The CHAIRMAN. Gentlemen, thank you very much.

Mr. RILEY. Senator, if I could clarify one thing on the record as we leave? The fact that we have used a .04 level in our rule does not mean that the rule itself tolerates levels under .04. Our rule forbids impairment, and the rule simply says that at a .04 blood alcohol test one can presume impairment from the test alone.

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That does not mean that an employee cannot be removed from duty, and I suggest that the combination of an action which triggered reasonable cause coupled with a .03 on a test is going to be very strong evidence of impairment.

I would hesitate to take an employee out with a .01, and the reason is that at very low levels of alcohol consumption the breathalyzer is not a very accurate measure below .02. Curiously, the NTSB testified in opposition to a zero standard for alcohol at our hearings for that same reason, that below .02 the equipment simply is not reliable enough to give you a good reading.

I wanted to clarify that on the record.

The CHAIRMAN. All right.

The next panel is Mr. William Dempsey, president, Association of American Railroads, and Mr. Fred Hardin, president, United Transportation Union.

STATEMENTS OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; AND FRED A. HARDIN, PRESIDENT, UNITED TRANSPORTATION UNION

Mr. DEMPSEY. Thank you, Mr. Chairman. I am glad to be here to give the industry's comments on the problem of drug and alcohol abuse in the rail industry and the FRA's new rules and regulations.

We have been as an industry very, very sensitive to this problem for decades. We have been under no illusions. We know that we cannot escape the problems that the rest of society has.

Since around, I guess, the turn of the century our railroads have had what is commonly termed a Rule G, which is about as strict a rule with respect to originally alcohol and now both alcohol and drug usage as can be composed.

Having said that, I think at the same time that I need to say that the vast, vast majority of our employees are sober and dedicated, and they are as concerned with this problem on behalf of the minority as management is. It has been due to their efforts that in the past, in the recent past, our safety record has improved year by year so that now we are at an all-time low in respect to train accidents and employee deaths and employee casualties.

Nevertheless, we do suppport the FRA's initiative, and we commend them for the thoughtful and careful way that they have approached this sensitive problem. We support the rules. We did not agree with each and every aspect of them, but we find them thoroughly acceptable.

I might just, by way of an interesting note, give you a few figures from the Southern Pacific. The Southern Pacific has been a leader in this area now for some time, and in August of 1984, after a previous effort to use breathalyzers was frustrated by a court decision, they did put in a new system of toxicological testing. Their experience, I think, is quite illuminating with respect to what we can expect to see emerge from the FRA's regulations.

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For example, they calculate that their human factor accidents have declined 66 percent from August of 1984 to the end of January 1986, and the lost time injuries declined by over 24 percent. They tested almost 2,000 transportation employees, and I regret to say that they found 213 tested positive in the first month of this testing program. Over 23 percent of employees tested were found positive.

Now, that has declined. That has declined steadily over this past 18 months to less than half of that figure, so that the program has been, in their judgment——

The CHAIRMAN. Tested positively for what?

Mr. DEMPSEY. For drug or alcohol. Now, in that connection let me say that in their experience drug is far the more pervasive problem: marijuana first, cocaine second, and then alcohol.

I think really I have nothing useful further to add to what Mr. Riley said, Mr. Chairman, and I would just close down and be glad to answer any questions that you might have.

[The statement follows:]

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STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads welcomes this opportunity to comment on the federal regulatory program which is currently being phased in to control alcohol and drug abuse in railroad operations.

My name is William H. Dempsey. I am President and Chief Executive Officer of the Association of American Railroads, a trade association representing the nation's freight railroads. Our members operate approximately 94 percent of the nation's railroad mileage, haul approximately 98 percent of the nation's railroad traffic and employ 92 percent of the nation's railroad workers.

For years the railroads have been committed to the strong and effective enforcement of the prohibition against the use of alcohol and drugs in the work place. Both management and labor within each railroad have devoted substantial resources in attacking this issue. The railroad industry cannot ignore that fact that its work force—from top to bottom—reflects society as a whole and confronts the same problems. However, the railroad industry is among the leading industries in combatting drug and alcohol abuse. They have been very progressive in the adoption of alcohol and drug abuse programs. They also have learned much in applying and adapting those programs. The commitment of the industry to eradicate the problem is deeply embedded and unshakeable.

In discussing this subject it would be a terrible mistake not to recognize that the vast majority of railroad employees rank among the most responsible and productive in the nations work force. These railroad employees must receive a substantial amount of the credit for the significant improvements in the railroad industry's safety record. Train accidents, employee injuries and fatalities have been decreasing in number and are at all time lows. That could not have been accomplished without a dedicated, efficient and sober work force.

Mr. Chairman, you and the members of this committee are to be commended for conducting these very timely hearings as we embark on a new chapter in the record of the control of drug and alcohol abuse in the railroad industry. It is proper that we acknowledge the aggressive leadership of the Federal Railroad Administration in developing its comprehensive regulatory package and to assess the impact these regulations will have in the attempted elimination of drug and alcohol abuse in the railroad industry.

Without detracting from the very skillful construction of the regulations themselves, I would urge that we also recognize that through its leadership the agency has fostered widespread attention on the necessity for eliminating drug and alcohol abuse as a problem in the industry. The administrative process itself produced an awareness of the problem and a commitment for effective enforcement and rehabilitation.

The efforts of the FRA in approaching the very complex task of dealing with behavioral problems in the workplace are to be commended. We would be remiss if we did not publicly acknowledge the thoughfulness with which the FRA approached its task. The rules clearly reflect a studied attempt to establish an effective program while preserving the dignity of the dedicated employee.

I would like to take this opportunity to comment briefly on the principal aspects of FRA's regulations.

FEDERAL RULE G

For more than a century the railroads have included in their operating rules a prohibition against the use of alcohol while on duty or the performance of duty while under the influence of alcohol. These rules have been amended times over the past years and now also prohibit the use of drugs. The so-called Rule G's have been clear and understood by the employees.

With the adoption of FAA's regulation these railroad Rule G's have the force of federal regulation behind them. I note that the federal rule contains a blood/alcohol concentration threshold for presumed impairment. We assume that this federal threshold will not prevent railroads from enforcing rules based on the concept that no amount of alcohol in the blood is tolerable.

Mandatory post accident testing

There are three objectives which the FRA intends to achieve through post-accident testing. It is anticipated that the prospect of having to submit to toxicological testing following an accident will be a sufficient threat to deter employees from consuming alcohol and drugs. It is also expected that post-accident testing will constitute an effective detection mechanism to be used in the railroads' enforcement pro-

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grams. The third objective is that as a by-product of accident investigations there will be an accumulation of sufficient data to measure the extent of alcohol and drug abuse by railroad employees in train and engine service.

Reasonable cause testing

The FRA drug and alcohol regulations are more noteworthy for the procedural protection afforded individual employees, than for any expanded testing authority granted to the railroads. In the past there was some dispute concerning the circumstances under which railroads could test employees for alcohol and drugs. The FRA has now identified the circumstances under which testing may be required by a railroad. However, in doing so the FRA has carefully structured restraints which protect the employee.

Employee assistance and referral programs

For many years railroads have had employee assistance programs and will have no difficulty in adapting these programs to FRA's requirements. Several major railroads previously instituted referral programs which insulate a first time offender from the disciplinary provision in Rule G. The referral process contained in these so-called Rule G by-pass agreements are now required by the FRA regulations.

CONCLUSION

The nation's railroads are in the process of implementing their enforcement and rehabilitation programs in a firm but fair manner. Firm, because the circumstances demand it. Fair, because we are concerned with the human dignity of a responsible and dedicated work force. The serious consequences that can stem from an action of an impaired employee demand that all available steps to eliminate or minimize this problem be taken. The federal regulations facilitate a comprehensive approach. Hopefully, the regulations will induce troubled employees to seek assistance, and encourage employees to prevail upon troubled co-workers to seek assistance. Importantly, through FRA's careful articulation of the circumstances under which railroads will test for the use of alcohol or drugs, employees clearly will be aware of the consequences of detection through the abuse of alcohol or drugs.

We do not have any recommendation for changes to the regulations. We look forward to their successful implementation. After we have had sufficient experience under these regulations we look forward to joining with FRA and rail labor in an assessment of the effectiveness of the regulations.

Taking a realistic view, we cannot expect to eliminate totally alcohol and drug abuse as a problem if society at large cannot. But hopefully, in the railroad industry, with the cooperation of the FRA, rail labor and management can drastically reduce the potential for safety hazards which could arise from drug and alcohol abuse.

The CHAIRMAN. Mr. Hardin.

Mr. HARDIN. Mr. Chairman, my name is Fred A. Hardin, and I am president, United Transportation Union. I appreciate the opportunity to appear before your Committee and voice our concern and some disapproval of the recent regulations.

As representing a great majority of the operating employees, it seems that there is a certain amount of discrimination in the regulations and there is a great legal question of constitutionality of them. We do not—we certainly know that FRA had an interest and was being panicked by the National Transportation Safety Board to some degree. We knew that there were some kind of regulations that were going to come out, and we worked with them for months and months, hoping that they would be reasonable.

The use of drugs and alcohol is not peculiar or limited to railroad operating employees. I think we are just like every other American. About 17 percent have a problem, and 12 percent have a serious problem. I think the more affluent have the same problem. They

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probably use a better grade of drugs or alcohol, but nevertheless it is the same problem.

The union, our particular union, for over 12 years has spent hundreds of thousands of dollars working with the UP Railroad and two or three others in an effort to treat this as a huma tarian or social problem and give the people an opportunity to rehabilitate themselves.

It is a known fact that one employee would not report a fellow employee or not voluntarily turn himself in knowing that he was going to be dismissed permanently from the railroad, but after we made great progress in these rehabilitation programs that was eliminated, and people are turning other people in every day. We call it a peer referral.

On some railroads it has been misused and abused, but the regulation says they are now—and there are some rules that go to the far extreme. One major railroad—we had to go to court—was using sniffing dogs. Well, historically dogs have greeted each other in that manner, but it is just degrading and embarrassing for an employee who has never been known to drink or use drugs to be greeted by a dog in a normal doggie fashion.

But we were able to take care of that just through some court action. The regulations as they are now in effect are going to ruin our rehabilitation program because many, many of the railroads now will not enter into agreements, such as UP, Conrail, Chessie System. We have excellent agreements. They are working, doing wonders.

Now that the regulations are out, all the railroads have to do is state a policy. The FRA does not have the policing authority, nor does it have the funds to enforce those, so consequently the railroads are going to continue to use rule G and also attempt to circumvent through use of the new regulations.

The regulations should not be applicable to any railroad that does not voluntarily enter into a rehabilitation program. There is an interesting facet to this. There are two railroads owned by the Federal Government, Amtrak and Conrail. Those people cannot be fined without a rehabilitation opportunity under Federal law, so really this—now, they have talked here today about railroad employees must, there must be two qualified supervisors to demand a test. The way they get qualified is a 3-hour course.

There is another interesting facet. The American Medical Association came out in a journal just recently and said there is absolutely no bonafide laboratory test to show other than drugs in a system. It does not show what the drugs are, or how much the person might be impaired. I want to make one thing clear. We, as a union, were not interested in a man working at .02 because, in my opinion, he is half drunk. We want to completely eliminate it in the railroad industry.

We do think that we are being discriminated against when you compare us to the—well, we have talked about the trucking industry, and certainly the regulated trucking industry has some sort of supervision, but the gypsy truckers who try to go from coast to coast without getting any sleep cause more fatalities in a 24-hour period than we have in the railroad industry in 5 years.

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We sincerely feel that we are being discriminated against. We think that these regulations, maybe they are great. At least the pre-employment screening is something we should have had many, many years ago but we know for a fact that railroads have hired people in the last year that had drug problems for 3 years prior to being employed. We know that we just recently had an accident that the railroad has already paid out $6 million, and there were no drugs or alcohol involved.

We think that these regulations were put out too quickly and too hastily, and they are going to make the employees go back underground instead of continuing the great effort that we have put in so much money and so much time to do.

I think that is all I have. I would be glad to answer any questions.

[The statement follows:]

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STATEMENT OF FRED A. HARDIN, PRESIDENT, UNITED TRANSPORTATION UNION

My name is Fred A. Hardin. I am President of the United Transportation Union, the largest rail union in North America. Most of the UTU membership consists of operating employees covered by the Hours of Service Act.

My first comment to this Committee is that we in the United Transportation Union are constantly bothered and bewildered by the doublespeak of many on the subject of deregulation vs. regulation. These confused people contend on the one hand, that deregulation is good when it removes the heavy hand of government from the business affairs of Corporate America, and that regulation is beneficial when it places the heavy hand of government on the lives of American citizens. It seems to me that this Orwellian concept pervades the talk of members of Congress on both sides of the aisle, in governmental agencies, as well as in the White House. This concept goes back to the theory I guess that stated the earlier proposition that what's good for General Motors is good for America. For GM we substitute FRA or more appropriately, the NTSB.

In our judgment we do not believe that the establishment of another layer of Federal Rules and Regulations will complement our joint labor-management efforts to address the varied problems of alcohol and drug use in our industry. On the contrary, we believe that unwise regulations will lead to an era of massive cover-up of the problem, and so we will return to where we began over a hundred years ago with the original Rule "G" to the battleground of discipline only.

An attempt to substitute Federal rules, and/or mechanical testing devices for voluntary assistance programs, will in the end prove self-defeating. Because this approach will inhibit the development of a prerequisite to successful programming, i.e., the principle of peer involvement, intervention, and guidance.

After two years of study by a team of behavioral scientists, and labor and management representatives, involving people on seven major railroads, a report was made to the industry setting a course of action to follow in dealing with this troublesome problem.

The Railway Employee Assistance Project Report of 1979 set forth certain conclusions and made necessary recommendations to address these problems. According to the REAP Report, the necessary ingredients for an effective Employee Assistance Program include the following items:

1. An understanding of alcoholism as a health problem.
2. Intervention on the basis of diminished job performance and rule violations.
3. Threat of dismissal used as leverage to get people into programs.
4. Adequate referral mechanisms.
5. Competent people to assess and refer.
6. Assurance of job retention for successfully rehabilitated problem drinkers.
7. Use of outpatient treatment agencies.
8. Adequate insurance coverage.
9. Integral role for labor.
10. Systematic ongoing evaluation.
11. Confidentiality.
12. Better record keeping to serve evaluation, confidentiality and insurance needs.
13. Adequate program promotion efforts.
14. Reducing the incidents of drinking problems, i.e., prevention.

We say to you here today we have a road map to follow in our mutual quest for the right route to travel. If we but follow these REAP recommendations, we will find a better and more permanent solution to this problem than will ever come from the dictate of Federal rules, and regulations. We have not altered our course in the past 12 years.

For some unknown reason, we are faced with the situation that while we ourselves charted the course with the REAP Report, a segment of the industry has seen fit to avoid both its conclusions and recommendations, thereby hampering the efforts of those who have accepted the tenets of the report from carrying out its plan for the industry. It is time for this conflict of industry interests to cease, and for all of us to grasp the opportunity to resolve this problem for ourselves, and by ourselves, through the development and implementation of programs that are soundly based and jointly supported.

We believe employees are entitled to a safe environment within which to carry on their work activities. When this environment is threatened by the unwise use of alcohol and drugs, they have a right to demand its uprooting from the work place, and the UTU's policy is to support them in these efforts.

To adequately deal with this problem requires a firm commitment on the part of labor and management to support soundly developed and administered Employee

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Assistance Programs that operate on the principle of "shape up or ship out"—not ship out and then shape up. We don't have as many of these sound programs as we need, and until we get them, we will never properly address the problems of alcohol and drug use.

We need and solicit your support in pursuit of our goal to get these programs going where they don't exist, and to make them better where they do.

People who need help will get it, and a safer place for all to work will result, and the need for Federal intervention will disappear.

The UTU once again is compelled to point out that Federal rules by themselves are not going to solve the problem of the use of alcohol and drugs in railroad operations.

It was pointed out in 1979 in a two-year Federal Railroad Administration sponsored study on Railroad Employee Assistance Projects (Project REAP). The report was called the most comprehensive survey of its kind ever made in any industry.

It was pointed out in 1982 in a follow-up study on the REAP report prepared for the U.S. Department of Transportation.

It was pointed out in my statement on the FRA's notice of proposed rulemaking in 1984. It was pointed out in numerous presentations on the subject in recent years and at conferences sponsored by the FRA throughout the nation.

And I am again saying that the most effective solution to this problem would be to require each railroad to have a sound voluntary labor-management Employee Assistance Program in conjunction with Rule G By-Pass agreements and an Operation Red Block program.

If this is not done, I predict that we will soon be back again to the great "cover up" we have tried for years to avoid with our voluntary self-help programs of people helping people.

The FRA rules which became effective February 10, 1986, after the U.S. Supreme Court lifted a stay of an appeals court injunction that permitted the rules to go into effect will jeopardize more than 17 years of work and waste hundreds of thousands of dollars spent by our government, the railroads, and our rail unions on studying, developing and implementing the most effective program ever jointly devised to deal with this 150-year-old industry problem.

In a case that is still pending before the U.S. Court of Appeals for the Ninth Circuit in San Francisco, the UTU and other unions have charged that the new rules violate the Fourth Amendment as an unreasonable search and seizure because it requires intrusive blood and urine tests without probable cause or even a reasonable suspicion that employees are under the influence or are impaired by any chemical substance prohibited by the rule.

We have argued that the rule mandates testing on the mere chance that the rule may have been violated without a scintilla of corroborating evidence, and have instituted claims on some railroads to correct this injustice.

And, therefore, although the Supreme Court has allowed the rules to go into effect, we still believe the rules are unconstitutional, unnecessary and an unjustified invasion of human dignity and privacy. We consider it inappropriate for our government to deregulate the affairs of companies while regulating the lives of their employees.

We have objected to the rules for many other reasons including the fact that they are discriminatory, because they apply only to employees governed by the Hours of Service Act, and not to management officials who themselves have an alcohol and drug problem, and whose decisions and orders are often potentially life-threatening because of their control over rail operations.

The imposition of Federal Rule G will never work for those who have an alcohol or drug problem as long as the rule seeks to eliminate rather than to rehabilitate them. Our experience has shown that laws even when the penalties are severe and supposedly as a deterrent—have never effectively dealt with this problem. Need I remind you of our 13 year mistake with a Constitutional Prohibition Amendment.

Our biggest fear is that the new and unenforceable rules will set us back to the days of the cover-up. They will hinder, not help our efforts to promote self-help measures in our ranks. We fear this cover-up will continue until peer prevention or peer guidance, if you will, becomes a workable alternative.

We have been trying to promote employee assistance programs for many years. We warned the carriers that unless they adopted similar programs they would have Federal rules imposed on them. Some listened, some didn't.

Why some of the railroads chose to ignore and even oppose the concept is beyond our comprehension. In some cases we find that management is more concerned with discipline than help. Sadly, we found that a certain segment of the industry chose to

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avoid the conclusions and recommendations of the REAP report and only hampered the efforts of those who were willing to give it a try.

With an employee assistance program on the property, the employee is removed from service, generally without pay, pending rehabilitation. If no such program exists, the employee is usually fired, and his problem passed on to some other segment of society. No state criminal law is harsher on a person's life.

While we are disappointed with the lack of participation in developing employee assistance programs, it is even more difficult to understand how the FRA, after being involved in the development of voluntary employee assistance programs. should have allowed itself to be stampeded into the rulemaking. We believe the FRA was misguided. And most of the blame for that falls on the shoulders of the National Transportation Safety Board which waged a campaign using intimidation and police-state tactics to force Federal regulations upon railroad employees.

The FRA at first was reluctant to write the new rules, noting the absence of meaningful incentives for employees to cooperate. That is when they inserted Subpart E—Rule 218:111 49 CRR—Identification of Troubled Employees, into the rules which requires each railroad covered by the rules to file a policy to promote early identification and help for problem drinkers and drug users.

The problem is the FRA failed to include in the new rules the basic standards necessary to construct and operate sound programs. These standards are an essential ingredient to a successful employee assistance program. Without the standards for the administration, education and training, data collection, counselor/patient ratios, resources, and program evaluation, there cannot be an effective employee assistance program.

The absence of these standards makes Subpart E of the FRA rules unenforceable on railroads without programs or on those with substandard programs. Congress if necessary must help correct these shortcomings.

Let me emphasize at this point that we do not condone the use of alcohol or drugs while on duty or when subject to call. This statement of policy by the union is the foundation of the voluntary peer guidance referral programs developed over the past decade and a half, and in place on railroads like the Union Pacific and CSX System. We find this to be a better way of handling the behavioral problems of people.

We have told everyone who would listen that we in the UTU firmly believe that the way to address the problems of human behavior is a professionally administered, adequately funded, jointly supported employee assistance program backed by Operation Red Block. Our experience has shown that no other approach can equal this.

Our experience has also shown that thousands of workers and their families in the United States and Canada have received needed help in these programs.

We had hoped that DOT would continue to work with us to improve these voluntary programs, not force a set of unworkable rules on us, and create chaos in the industry.

Let me also emphasize that we do not believe the railroads should be allowed to enforce only parts of the new FRA rules, while ignoring the provisions of the rule requiring each charrier to establish policies to identify and help those employees who may have an alcohol or drug problem, at least once in a lifetime.

We do not have to be reminded that is a problem. Substantiated records indicate that about 17% of all Americans have drinking problems and about 12% have serious drinking problems that often cause their lives to be unmanageable. We are vitally interested in the safe operation of American railroads and a safe environment for the employees of American railroads who do not drink or use drugs while on duty. The work is dangerous enough without to cope with alcohol and drugs on the job.

Because of this we cannot ignore the plight of the railroad workers who, because of the nature of their job, develop problems in their lives. The railroader is often way from home for long periods of time. The many idle hours, inability to mark off, stress on the job, the lack of recreational facilities, and oftentimes the environment they are forced to live and work in can be a contributing cause to unhealthy work habits. The situation could be vastly improved by improving the work environment, reducing lay over time, providing good housing and recreational facilities at away from home terminals and rewarding those who are safe workers. We want to help those that need help, and to provide a safer work place for the majority. Maybe you can convince the whole industry to join us.

The old Rule G has proven not to be an effective deterrent and the new Federal Rule G is not going to do any better. In fact, we believe the new rule could lead to a massive cover-up of the problem. Publishing actions are no more effective in treat-

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ing someone with alcohol and/or drug problems than they would be in treating heart disease, diabetes or cancer. Pointing the finger at the person in need of assistance won't help half as much as pointing the way.

Although the FRA's rules are now in effect, we still believe the best way to eliminate the use of alcohol and/or drugs is to give the employees an opportunity to monitor themselves and to assist in rehabilitating or educating those in need of help before accidents occur. A training role we believe should be shared by the FRA.

As I mentioned earlier, one of the things about the new rules that bothers us the most is the lack of standards for carrying out the referral provisions of the new rules. How will some carriers carry out the provisions of the rules when they have no effective Employee Assistance Program?

How are some carriers going to conform to the rules when they have no trained counselors to carry out a low budget program and no experience or knowledge in handling problems involving alcohol and drug except discharge. How are the unions going to protect their members on railroads where there is no Employee Assistance Program? The EAP programs on some railroads are nothing more than a token effort to satisfy FRA requirements. All form—no substance. We suggest you in Congress should change this, if necessary.

The rules need standards that all carriers must meet. At present, they do not spell out the qualifications for counselors. They do not set the standards for their training or their certification. They do not put a limit on case loads or set the ratio of counselors needed to serve a given number of employees on each railroad. They do not demand professional program administrators.

The rules do not require the railroads to budget for the expense associated with setting up an effective EAP program. One of the major weaknesses of the FRA rules is that they will be cost effective—they will cost the Federal government millions of dollars to police, while effective EAP programs that have proven to be more cost-effective, and successful in dealing with the problem, will suffer from lack of industry support.

We question how the FRA, with only a handful of safety inspectors, will be able to fairly enforce the new rules, in addition to the tasks they are now responsible for.

If the Federal government cannot control the importing of illegal drugs like marijuana, cocaine and heroin, how are they going to stop its use through regulation, with a handful of Federal Inspectors?

The rules do establish a schedule of civil penalties on the railroads for failure to report accidents and for failing to make required post-accident tests. We doubt many of the fines levied will ever be collected.

There appears to be no penalty if a railroad fails to establish the required voluntary or co-worker referral program. How is the FRA going to enforce this requirement of the rule?

In my opinon, the FRA now has a tiger by the tail and they can't let go.

The FRA spent $500,000 for the REAP study, which has been available to the FRA, to the industry, Congressmen and the public since 1979. Unfortunately, many railroads, the FRA, and the NTSB, chose only to use the adverse findings brought out in the study. They ignored the report's many recommendations for solutions to the problem. They went right from the most onerous conclusions of the Report to the Federal rules. I call this the "leap from REAP."

Also ignored were the standards for EAP programs established by experts on the subject. They are the Association of Labor Management Administrators and Consultants on Alcoholism (ALMACA), the National Council on Alcoholism (NCA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the Occupational Program Consultants Association.

We are not experts in the field of alcohol and drugs but neither are the FRA and the railroads and yet we are dealing with a subject that affects the lives of thousands of people. The Rules are here—but money for workable programs is not. Where is it to come from.

All the industry, labor and government have to do is to follow the direction set forth in their own study. In my opinion, had we followed the recommendations of the REAP study, I would not have to be speaking today on this subject—because there wouldn't have been the need for Federal rules. Why not read the REAP Report again and follow its directives? It's not too late to learn.

The FRA has wrongfully assumed that safety will be improved by transferring the handling of alcohol and drug problems from the railroads to the government. No one to date has demonstrated that the new rules will not result in increased accidents. Our safety record is now and always has been superior to that of other transport modes. Both the industry and DOT admit this.

Another important problem with the FRA rules is that there never has been an industry REAP-type study that we know of on the use of drugs other than alcohol in

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the rail industry. Why was there an urgent need to push for rules on drug use in our industry until after we have investigated the problem and made recommendations for its solution.

We need a close look at the drug problem. Another REAP study if you will. We need demonstration programs, model training packages, model education packages, model prevention packages and training—all with government, industry, and labor participation. You can help—if you will.

The REAP report, which was used as a springboard in the leap for the rules, was completed in late 1979. This is 1986. How do we know that the problems that existed back then have changed or been addressed? We need another REAP study to tell us where we're at and where we should be going.

On some railroads with EAP programs, the recovery rate is as high as 70% of those entering the program. Can the Rules accomplish more?

We should also take a careful look at Operation Red Block, a prevention program now in place on some railroads. Unless the new rules destroy its effectiveness, Operation Red Block is a model of how labor and management should work to solve this problem on their own.

The problem now is, how is the FRA going to get employees to cooperate when they have painted every railroader, teetotalers and all, as a bunch of misfits that have to have a Federal gun pointed at their heads? How do you expect railroaders to feel when they are subject to the constant harassment of overzealous management officials? Does anyone care about doing something about this problem other than grabbing the headlines that stories on this subject generate? Only time will give the answer to this question.

There is a better way. Now let's use it. We have told you what we think it is.

1. The rules alone will not solve the problem, they must be accompanied by sound Employee Assistance Programs—jointly supported and backed by Operation Red Block.

2. The rules themselves pose the danger of an even greater cover-up and could destroy 17 years of work to obtain voluntary cooperation by the employees, if they are used as smoking guns.

3. The rules are unenforceable without setting the standards for an effective Employee Assistance Program.

4. The FRA has neither the manpower or the expertise to enforce the rules—neither do the railroads without our help.

5. We need more research on how EAP programs have worked, should work, and the extent of the problem today, and we must learn how to deal with the use of legal and illegal drugs.

We thank you for this opportunity to present our views on this vital subject. We stand ready as always, to help in every way we can to eliminate the problems of alcohol and drug use and abuse in the rail industry. But we need help.

The CHAIRMAN. Well, Mr. Hardin, we do not want people to operate trains while they are drunk. Do you?

Mr. HARDIN. Absolutely not, Mr. Chairman.

The CHAIRMAN. Or while they are under the influence of drugs?

Mr. HARDIN. Absolutely not.

The CHAIRMAN. It is no answer to say that if we are stopping people from operating trains while they are drunk it is discriminatory because some people are driving cars or trucks while they are drunk. That is no argument, is it?

Mr. HARDIN. Well, Mr. Chairman, if I inferred that I apologize, because I certainly have more sense than that. We do not want people reporting for duty under any form of influence.

When we talk about probable cause—we are talking here about probable cause. Now, we have people—one of the great probable causes is a supervisor. Bear in mind that we are not talking about the board of directors. We are talking about the people who are out on the property and they tell a man to violate a rule. You can exceed the

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speed limit today, or if the man says, well, look, I think we ought not to work this engine, there is oil all over it or something, that is probable cause that there is something wrong with the man because he is disagreeing with the supervisor.

Those are the things that we have problems with.

The CHAIRMAN. No. If an engineer for a railroad came to work while he was plainly drunk, you would want somebody to stop him, would you not? You would want somebody to prevent him from operating this locomotive today.

Mr. HARDIN. Certainly, Senator. We would want him, if he is one-tenth drunk—we do not want people working. We have no interest in protecting people who refuse to help themselves, but we do have an interest in protecting people who for 30 years have never been known to take a drink, and the great majority——

The CHAIRMAN. Well, I think it is fine to put them in rehabilitation programs. However, I believe that is not an argument for saying that if somebody shows up drunk only 1 day out of 30 years that you just tell him it is okay, you are generally a good guy, and you may operate the train.

It would seem to me that you would want some way of keeping that person from working that day.

Mr. HARDIN. We have that way, Mr. Chairman. We have that way today on five railroads, where we have these excellent programs. We have rehabilitated hundreds of people, and we do not want anybody working under the influence or even reporting. Today on those railroads people——

The CHAIRMAN. That is purely voluntary. Your buddy can turn you in, maybe, if he feels like it? What I am talking about is somebody with the absolute responsibility of saying you appear to be drunk——

Mr. HARDIN. Nothing in the world——

The CHAIRMAN. and we are going to test you. What is wrong with that?

Mr. HARDIN. There is nothing in the world wrong with it, but may I ask you a question? You have a crew of five people and the supervisor thinks that one of them, one of those five has—there is probable cause. He sends them all to the laboratory to be tested.

The CHAIRMAN. What is wrong with that? I wonder if he would do that?

I think that one can tell if five people are in front of him and one of them is drunk. I think he can pick out which one. But let us suppose that for some reason he could not. I just do not understand why it is an imposition on people to make it plain that they are not drunk before they drive any kind of a vehicle.

It seems to me that if you are going to operate a train and there is a question, a reasonable question, as to whether you are sober and fit to drive, that you could be given a breath test or a urine test. Is that a great imposition?

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Mr. HARDIN. I think it is a constitional imposition.

The CHAIRMAN. That is for the courts to decide. I am talking about a rule of reason. Last weekend I went out to Missouri. I went through a metal detector. Is it an infringement of my constitutional rights to go through a metal detector? I was not carrying a bomb or a gun. I do not think that that is any infringement of my rights.

The basic safety of the public is what is involved. We say to every airline passenger, even if the chances are 1 in a million that anyone would be carrying a gun, every single person gets screened.

Why shouldn't pilots on airplanes or locomotive engineers as a matter of course get screened before they operate a vehicle?

Mr. HARDIN. Let me agree with you, Mr. Chairman. In another discriminatory aspect, we are the operating people. We run the engines. We work on the trains, and we switch the cars. Just to show you discretion, the carmen who inspect the train and ascertain that the brakes are working and ascertain that the train is safe are not covered.

The CHAIRMAN. I think they should be.

Mr. HARDIN. They are not. The maintenance of laypeople who are totally responsible for the track alignment, they are not covered under the regulation. The supervisors who issue oftentime absurd and asinine instructions and ask you to violate a rule, they are not covered.

The CHAIRMAN. Suppose all of them were covered? Would you then be in agreement that it is a good rule?

Mr. HARDIN. No, sir. I would be in agreement that 90 percent of it is a good rule, but this invasive testing without probable cause is degrading.

The CHAIRMAN. It is for probable cause. I think it should be random testing, but this rule is for probable cause. For drugs two supervisors must agree there is cause, and one of them has to have had special training in the symptoms of drug use.

Mr. HARDIN. Yes, 3 hours. I think the requirement is 3 hours. My attorney would like to speak.

He is like John Riley. He likes to make speeches.

VOICE. Mr. Chairman, concerning the probable cause I would like to take issue with you, if I may, on that. The rule has a probable cause aspect only as far as we are concerned in one part of it.

The rule automatically requires a test after certain accidents. Traditionally that is not probable cause unless it is related to that individual who may be under the influence, but this rule directs the carrier to test the entire train crew for an accident, even a rule violation.

If a train goes 10 miles over the speed limit, that is a rule violation set forth in this regulation. The entire crew must be tested. That is discretionary testing by the railroad. That, in our view, is certainly no way, shape or form probable cause under the Constitution.

The CHAIRMAN. That is something that you are testing in court. It just seems to me that basic safety requires sobriety when operating a train.

Mr. HARDIN. Mr. Chairman, we find no fault with that.

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The CHAIRMAN. Mr. Dempsey, what was the percentage that tested positive?

Mr. DEMPSEY. Twenty-three percent in the first month, and that is down evidently to half that now.

The CHAIRMAN. Let us suppose that it is 11 or 12 percent of people who test positive who are operating trains. That is nothing to exactly breathe easy about, is it? If you were told that only 11 percent of the people who are getting on airplane with you are terrorists, you would not say that is 89 percent pure.

Mr. HARDIN. Mr. Chairman, I could not help but notice in the airline testimony that the commercial pilots just do not have any——

The CHAIRMAN. I will tell you, I cannot understand the position of the FAA. I cannot understand it at all.

Mr. HARDIN. I was reminded while they were testifying. I was in Florida last week, and I noticed where a commercial airline landed at the wrong airport, and I just wonder. He may not have been under the influence, but at least in the trains we do take them to the proper terminal.

Mr. Chairman, we do not want to be argumentative about it, but we do point out that we think it is discriminatory in certain areas. We think it can be fixed, and we will certainly endorse it.

The CHAIRMAN. I want to tell you that I think you have staked out a position, and that is it as far as you are concerned. I just do not agree with your position.

Mr. Dempsey, let me ask you. Do you think that with the implementation of the FRA rule we can breathe a sigh of relief? Do you think this is the ultimate solution to the problem of the use of drugs or alcohol by railroad personnel?

Mr. DEMPSEY. I do not think we can ever reach that state of assurance, Mr. Chairman. The problem in this society in general is just too large, but I think that the experience of the SP and its testing program does indicate that very, very major improvements can be expected.

I would just make one or two comments. I personally agree with your position with respect to random testing, and that was our position in the rule making proceeding. The emergence of the rules in terms of probable cause is obviously driven by the attorneys who felt there was a legal problem with it. I do not, myself, have that problem but others doubtless are smarter than I am in this area.

The CHAIRMAN. You are a graduate of Yale Law School, are you not?

Mr. DEMPSEY. I believe someone else in the room is as well, and it is certainly a fine institution.

The point that Mr. Mann makes is not an unreasonable one. On the one hand, if you have an accident that causes $500,000 worth of damage but it is perfectly clear that there could not have been any human factors associated with it—to take the Amtrak accident up in the northeast where the rails just washed out in a flood in the middle of night—I would say it is perfectly reasonable in those circumstances not to have to test those crewmen.

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On the other hand, since I think random testing is all right, I think the that rule is all right, too, but I can understand an argument going the other way.

The CHAIRMAN. Do you think this is a good rule?

Mr. DEMPSEY. I think it is a pretty good rule.

The CHAIRMAN. You would tighten it, though? You would have random testing?

Mr. DEMPSEY. I would have random testing.

The CHAIRMAN. Gentlemen, thank you very much for your testimony.

[The following information was subsequently received for the record:]

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ASSOCIATION OF AMERICAN RAILROADS,
Washington, DC, February 19, 1986.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I would like to clarify my testimony of yesterday respecting drug and alcohol abuse in a couple of respects.

First, I am afraid I left you with the wrong impression regarding the results of the Southern Pacific testing program. As I said, currently about 10% of employees tested are found positive. One of your comments suggests to me that you believed this meant that about 10% of transportation employees may be under the influence of drugs or alcohol at the workplace. That would be true if the testing were random. But, as I failed to make clear, it is not. As in the case of the FRA regulations, almost all testing is limited to prescribed circumstances suggesting, for want of a better phrase, probable cause. (Testing of non-union employees is random, but the results would not have a significant impact.) Accordingly, it is not at all surprising that 10% tested positively. Moreover, that figure obviously means nothing in terms of what percentage of our work force may be operating under the influence of drugs or alcohol. The significance really lies in the fact that the percentage has been cut in half during the testing program. That, together with a 66% decline in human factor accidents and a 24% decline in lost-time injuries, strongly suggests that a testing program can be quite effective in reducing the incidence of drug and alcohol abuse. As to the number of employees who may be working under the influence of drugs and alcohol, the significant Southern Pacific testing result is that since August, 1984, 213 Transportation Department employees have tested positive. While obviously much less than 10% of ther relevant work force, the number is still not insubstantial. Moreover, the testing has been limited to urinalysis. Presumably intoxilyzer testing would uncover additional cases of alcohol abuse.

Next, at the very end of my testimony I am afraid I may have left a somewhat incorrect impression of my view of the FRA regulations. You asked if I thought that they were "pretty good," and I said I did. That really understates my regard for the regulations. I think they are very good. They represent a truly major step in combating a serious problem, and Mr. Riley and his associates deserve great credit for what I consider an outstanding job in dealing with a host of important and difficult issues. I am not well informed about the situation respecting the other modes, but I must say that simply on the basis of the testimony at the hearing it seems to me that the railroad industry is now plainly the leader in terms of federal regulations.

That does not mean, of course, that I agree with every aspect of the regulations. I suppose they should be suspect if I did. The principal point of difference that we discussed was random testing. I appreciate the arguments on the other side. No doubt the present regulations are better insulated from judicial assault than random testing would be, and one would have thought that they would be more acceptable to the unions. And the cooperation of unions and management is crucially important, as a practical matter. Accordingly, I am quite content with the course the FRA has taken as to this particular issue, though my personal preference would have been to include random testing as an option. I believe it would improve the effectiveness of the program, and, while recognizing the substantiality of the 4th Amendment issues, I find it hard to believe that the courts would invalidate a random testing rule. As to labor, to my regret and modest surprise, the unions don't appear to be any more reconciled to the new rules than the random testing proposal. And as to legal tactics, I am somewhat concerned at the prospect that a court upholding the present rules will, in accord with the arguments of the Government, uphold them because of the "probable cause" conditions, thereby casting doubt on the validity of random testing if in the future the Government should choose to follow that course. However, as I said at the hearing, others have thought about this more carefully than I have, and I am perfectly willing to defer to their judgment.

Thank you for directing attention to this critical issue. I hope the transition will not be too difficult. FRA has done, and continues to do, its work. It is up to labor and management to accept and implement the rules in a responsible and fair manner.

Sincerely,

W.H. DEMPSEY, *President.*

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The CHAIRMAN. The next panel is Mr. Thomas Donohue, president, American Trucking Association; Mr. R. V. Durham, director of safety and health department of the Teamsters Union.

STATEMENTS OF THOMAS DONOHUE, PRESIDENT, AMERICAN TRUCKING ASSOCIATION; AND R. V. DURHAM, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. DONOHUE. Thank you very much, Mr. Chairman. As you know, ATA represents more than 3,500 motor carrier companies nationwide, our members' vehicles are operated by hundreds of thousands of professional and sometimes not so professional truck drivers.

We are vitally concerned that those members are in good mental and physical condition for their own safety but particularly for the safety of those with whom they share the road.

Over the last 18 months I have met with many truck drivers across the company. As you know, we had six of them representing us in travel around the country at this time, and I am convinced the vast majority of them do not abuse drugs and alcohol. I suppose for a hearing of this nature, however, it is necessary for us to focus on the exceptions, those drivers who do abuse drugs and alcohol.

Clearly drugs and alcohol abuse does exist in our industry. While the precise extent of the problem is not known, we believe it is confined to a limited percentage of truck drivers, but that percentage, no matter how small, is too big.

The roots of these problems can be found, as other speakers said this morning, in society, changes that we have all experienced and the changing climate in the trucking industry as well. We in society are much more tolerant of substance abuse than we are ready to acknowledge. We vigorously profess our adherance of substance abuse and its negative consequences, and we would like the problem to go away, but in my judgment we have not, as of yet, taken the steps necessary to make this happen.

The changing climate of the trucking industry as well has a profound influence on drugs and alcohol abuse amongst drivers, particularly I would say on some of the independent drivers.

The heightened competition resulting from the Motor Carrier Act of 1980 has forced many carriers to operate more miles to keep the same volume of freight and income, and many carriers have also limited the size of their driver work force to cut costs. Thus, many truck drivers keep longer hours today than they did before the Motor Carrier Act, both legally and illegally, and under these pressures some drivers unfortunately have resorted to the use of drugs and alcohol.

Now, the trucking industry has already engaged in a number of efforts to control drug and alcohol abuse. Many motor carriers conduct drug and alcohol screening tests on a regular part of their safety activities. Carriers that employ teamster drivers, for example, conduct drug and alcohol testing under the terms of an agreement that is a milestone in management/labor relations.

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The ATA and its affiliates regularly conduct seminars and workshops to help motor carriers understand and cope with drug and alcohol problems. Further, the Federal Motor Carrier Safety Regulations of DoT contain a body of rules governing drug and alcohol use by truck drivers. ATA strongly supports these rules, and they are very important, as you know, to deter the use of these substances.

We seek to have the rules strengthened in two ways, and I think this is very important. First, the current regulations which were written intelligently by the Congress but then changed by somebody we cannot find permitted drug users to qualify as truck drivers so long as there was no clinical diagnosis of drug dependency.

Now, this provision should be strengthened so that drug users are disqualified as well. Now, you have begun to identify a problem, and all of us that have dealt with young people understand, for example, in the use of marijuana that it stays in the system for 16 days, and we need to have some more advice on how to handle that problem.

The second thing we need to do in my judgment is the DOT regulation should require pre-employment drug and alcohol screening and periodic screening thereafter as a part of the mandatory physical examinations required of truck drivers every two years.

Now, the trucking industry needs strong support from the Federal Government to combat this drug use, and you are taking a leadership role in that and we appreciate it. You can demonstrate—you, the Congress—a full commitment to this situation by appropriating the full amount of money that is needed for the Motor Carrier Safety Assistance Program. We need more roadside inspections, and your bill, which we vigorously support, would help us do that.

Plus, when we get there, Senator, we have another little problem. I heard a group of teenagers tell me the other day that they are going to stop drinking liquor and drive. They are going to smoke pot, because you cannot pick that up when you are stopped. Training is one thing, but we need some more clinical ways of telling.

It is fairly clear, however, that somebody that is experienced can find somebody that is operating under the influence at that time. How you prove it later is not a question, but you can sure find them.

I think we need also to get the drug enforcement agents into the truck stops. Some of those truck stops are pharmacies, illegal pharmacies, and we need some help there.

Also, if I can raise something parenthetically, and I will probably get myself in trouble with some of my friends and members, I am not sure why we sell alcohol in truck stops. We really ought to think about that.

Finally, as you know in that same regard we are trying to put some pressure on the shippers so that they become legally responsible for demanding the truckers drive longer or faster than the law requires to deliver the goods.

Now, we support your legislation, Senator, and we would make another point to enforce what we are talking about. In finding those who use drug and alcohol on an irrational basis, we need a single driver's license because otherwise the guy can go down three states

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away and get another job. We need to get that driver's license as a way of enforcing what we are trying to do in drug and alcohol abuse.

I would finally say that I think it is important that we leave to others, association executives and congressional staffs and so on, to figure out the exact number of .01, .04, because I do not really know, and I have polled our whole staff. We have got experts and everything, even more than they actually are. They keep reminding you they are, but I really cannot get the kind of advice that we need to tell you what is the right number, and I think we ought to get some folks that can give us some understanding.

For example, a physician told me just this morning, because I was inquiring about this, that if you eat enough foods with sugar in it you can come up with some very low drug/alcohol level or alcohol level in the blood. So if somebody has a little rum cake for lunch or maybe an ice cream sundae, you have that problem, so I think we need to get some help from the professionals.

Finally, let me end—and I am sorry I have run over a moment—by saying that we would vigorously support an effort to test those people who drive commercial vehicles on a random or some other basis for drugs and alcohol.

I would mention just one word about the word random. We would get to a lot more people if we used the see and listen system as well. Instead of stopping every fifth truck, I would like to sort of stop the ones that weave around and the guys that look like they just got off a spaceship.

[The statement follows:]

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Statement of Thomas J. Donohue, President and Chief Executive Officer, American Trucking Associations

I. Introduction

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations, Inc. I welcome the opportunity to address the important issue of drug and alcohol use in the trucking industry, which is a vital concern to the public and to motor carriers. I submit this statement on behalf of ATA.

ATA is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 11 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt.

The trucking industry employs 7.4 million Americans and generates annual revenues in excess of $200 billion. Each year 5 million trucks log more than 138 billion miles with an overall safety record that is almost twice as good as that for automobiles. These trucks, operated by more than 260,000 American firms, haul 77% of the dollar value of all freight carried in this country.

The American trucking industry provides an essential transportation service to the largest economy in the world. The essentiality of our industry is illustrated by the fact that access to trucking is considered by business to be the second most important factor in deciding where to locate a new plant, ranking behind only cost of property. It is clear that practical business decisions are made in the confidence that truck transportation will be available when needed.

Our members' vehicles are operated by hundreds of thousands of professional truck drivers. We are vitally concerned that those drivers are in good mental and physical condition for their own safety, for the protection of the motoring public, and for the protection of valuable freight and equipment.

As President of ATA, I have met and worked with many truck drivers at our National Safe Truck Driving Championships, at truck stops, and through "America's Road Team," a program recently initiated by ATA to improve truck safety and the image of the trucking industry. I am convinced that the vast majority of truck drivers do not abuse drugs and alcohol. Accident records from the Bureau of Motor Carrier Safety do not indicate widespread drug and alcohol use problems in the trucking industry. Truck drivers who abuse drugs and alcohol are the exception rather than the rule.

In a hearing of this nature, however, it is necessary to focus on those who abuse drugs and alcohol. But we must also avoid the erroneous conclusion that most truck drivers fall into this category.

The trucking industry shares the concern of the members of this Committee and the American people over the growth of substance abuse in society. Studies of various industries suggest that substance abusers are 3 to 4 times more likely to be involved in accidents than non-users.

This increased level of risk is unacceptable in any industry, especially transportation. It is of particular concern to the trucking industry because of the high level of exposure to the motoring public of the industry's largest group of employees, the drivers.

THE ROOTS OF DRUG AND ALCOHOL ABUSE IN THE TRUCKING INDUSTRY

There is clearly a problem of drug and alcohol abuse in the trucking industry. The precise extent of the problem is not known, but we believe it is confined to a limited precentage of all truck drivers.

The roots of drug and alcohol abuse among truck drivers may be traced to society and the changing climate of the trucking industry.

In a strictly legal sense, judging by the number of laws on the books that restrict or prohibit the use of certain drugs and alcohol, we as Americans are less tolerant of drug and alcohol abuse today than we were 25 years ago. But in a de facto sense, judging by what actually happens in our society and the lack of enforcement of existing drug and alcohol laws, we as Americans are more tolerant of drug and alcohol abuse today than we were 25 years ago.

It is unfortunate but true, for instance, that highway deaths resulting from drunk driving accidents have become an acceptable form of homicide. It is acceptable because we have not done enough to strengthen and enforce the laws that prohibit driving while under the influence of controlled substances. In any given year, nearly as many Americans are killed on our highways as were killed during the entire

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Vietnam War. One ray of hope is that many states are beginning to crack down on those who choose to drive while under the influence.

Drug and alcohol abuse is a problem in the trucking industry because it is a problem in society. The same forces that cause substance abuse in society at large also cause substance abuse in the trucking industry.

Drug and alcohol abuse among truck drivers may also be traced to the changing climate of the trucking industry. Since the Motor Carrier Act of 1980, more than 12,000 new carriers have entered the trucking business. This tremendous influx of new carriers had dramatically increased competition. Competition among a larger number of carriers has forced many of them to operate more miles just to hold on to the same volume of freight. To limit steadily increasing expenses associatied with operating more miles, many carriers have refused to increase the number of drivers on their payroll; some carriers have even cut the number of drivers. Thus, many truck drivers today stay behind the wheel longer than their counterparts did before the Motor Carrier Act of 1980. Under these pressures, some drivers have resorted to drugs and alcohol to cope with the rigors of longer working hours in an even more competitive environment.

These are the forces that promote drug and alcohol abuse among truck drivers. While we do not condone these factors, we recognize that no single action or law is sufficient to alter their effects.

ATA AND INDUSTRY EFFORTS TO CONTROL DRUG AND ALCOHOL ABUSE BY TRUCK DRIVERS

Many motor carriers conduct drug and alcohol screening tests as a regular part of their safety activities. Some carriers conduct testing on a calendar basis for all employees; other carriers test a sample of employees.

Motor carriers that employ Teamster drivers have entered into a carefully crafted agreement for drug and alcohol testing that is a milestone in management-labor relations. The major component of the agreement involves periodic testing for drug and alcohol use. Procedural standards for obtaining urine and blood specimens assure that the specimens for another person are not mistakenly identified as the specimens for the Teamster driver. The agreement also provides that a person who refuses to submit to testing is subject to discharge. If there is a suspicion of alcohol or drug use on the job, the standard is for immediate blood analysis.

Many other ongoing programs in the trucking industry help motor carriers understand and cope with drug/alcohol problems. Last week, for example, the Texas Motor Transport Association, an ATA affiliate, conducted a drug and alcohol abuse prevention seminar featuring medical experts, government experts, and motor carrier representatives who described what can be done to combat substance abuse in the work place. As drug and alcohol abuse problems have become better known, many motor carriers have implemented screening programs for both job applicants and as part of the periodic medical examination mandated by the Federal Motor Carrier Safety Regulations.

RECOMMENDED GOVERNMENT ACTION TO CONTROL DRUG AND ALCOHOL ABUSE BY TRUCK DRIVERS

Currently, the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation provide that a person is not qualified to drive if he has a current clinical diagnosis of alcoholism or drug dependency.

The regulations prohibit drivers from consuming an intoxicating beverage or being under the influence of an intoxicating beverage within four hours before going on duty. The regulations further prohibit possession or use of an intoxicating beverage or drug while on duty.

The regulations also provide that a driver is disqualified from operating a motor vehicle under the influence of alcohol or drugs, or for transportation, possession, or unlawful use of drugs while on duty.

ATA strongly supports these rules. They are essential to deter drivers from using drugs and alcohol while on duty and to protect the motoring public. ATA seeks to have these rules strengthened in two ways:

(1) ATA has petitioned the Bureau of Motor Carrier Safety to disqualify truck drivers if they are drug users. Current regulations permit a user to qualify as a truck driver as long as there is no dependency on drugs. We believe that efforts to demonstrate a clinical diagnosis of drug dependency are too time consuming and uncertain to be an effective means of evaluating a person's medical qualification to drive. Until drug dependency is proven, under present law, drug users are allowed to operate a commercial motor vehicle and may jeopardize the safety of others.

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(2) The ATA Executive Committee on January 29, 1986, adopted a policy to require pre-employment drug and alcohol screening, and periodic screening thereafter as part of the mandatory physical examinations required of truck drivers every two years. ATA will petition the Department of Transportation to incorporate this policy as part of its Federal Motor Carrier Safety Regulations.

The trucking industry needs strong support from the Federal government for effective control of drug and alcohol problems. Existing drug and alcohol problems suggest the need for more effective enforcement of the Federal Motor Carrier Safety Regulations through the Motor Carrier Safety Assistance Program and the Commercial Vehicle Safety Alliance. Both of these programs need additional support from Congress through funding and manpower increases.

In addition, Federal drug enforcement agents must work more vigorously to curb the easy availability of drugs. At some truck stops, drug dealers openly advertise on CB radio. The buyers are not solely truck drivers, but certainly some truck drivers are involved.

ATA also supports Federal legislation to penalize shippers who force carriers and drivers to violate traffic laws and safety regulations. The majority of the shipping community would not be adversely affected by such a law. However, shippers that take advantage of the difficult financial condition of some carriers and drivers by demanding service which necessitate violating the law should be subject to punishment.

Chairman Danforth has proposed legislation to address the problems of drug and alcohol abuse in the trucking industry. ATA supports efforts to revoke the driving privileges of persons who are found to be intoxicated while operating commercial vehicles. However, the determination of the level of blood alcohol content at which a person is considered intoxicated must be made by experts in the medical profession and not by legislators or association executives.

CONCLUSION

In conclusion, Mr. Chairman, I would like to quote a physician retained by a major motor carrier to perform physical examinations mandated by the Federal Motor Carrier Safety Regulations. He said: "There is no room on our highways for drivers using mind-altering drugs that significantly increase the risk of catastrophic events." Drivers who operate vehicles while "under the influence of drugs and alcohol" are ". . . a lethal hazard to all our citizens."

Mr. Chairman, that statement reflects the philospophy of the American Trucking Association. We do not want drug and alcohol users behind the wheels of trucks. We are constantly seeking new programs to detect such users so they can be disqualified and terminated. We need strong support from Congress and other government agencies to combat drug and alcohol abuse in the trucking industry.

The CHAIRMAN. Mr. Durham.

Mr. DURHAM. Thank you, Mr. Chairman. I am R. V. Durham, and to my right is Suzanne Kossan. She is our industrial hygenist and has been working very closely with our drug testing program in the last 6 months.

On behalf of our general president, Jackie E. Presser, we would like to thank you for the opportunity to appear here today and also present our views on drug and alcohol abuse in the trucking industry.

I would also like to commend you for your continued interest and leadership in the truck safety area. It is your leadership and your sponsorship of such legislation as the Motor Carrier Safety Act of 1984 which offers practical solutions to the problems of truck safety.

As you know, Mr. Chairman, the International Brotherhood of Teamsters has taken a leadership role in the area of alcohol and drug abuse. Under our National Freight Agreement, the National Car Haul Agreement and other national agreements, the IBT has adopted a nationwide drug and alcohol testing program.

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Our labor management program, which has been in place for about one and one-half years, covers approximately 200,000 of our members nationwide. Employees are routinely tested for drugs and alcohol during their DOT physical examinations and are tested for drugs and alcohol where there is probable cause or a probable suspicion. Any employee found by sophisticated testing methods to be using drugs or under the influence of alcohol while on duty is subject to discharge.

We would like to comment for a moment, Mr. Chairman, on why we at the IBT have assumed this leadership role in the area of drugs and alcohol. I guess we could go all the way back to the fifties, and you will find in all of our major contracts that use of, possession of or intoxication of alcohol and drugs has been a cardinal sin, but for the past year and a half we have worked out this program.

I have to say that we currently have it under review because we continue to find some loose ends that need to be tied down, but we would like to make it clear, if you would, to our knowledge there is no rampant problem among our membership in the unionized trucking sector.

Quite frankly, our union took the lead on the drug and alcohol industry to help dismiss these allegations and to help prevent any widespread problem from developing, and I might add to also allow the arbitration procedure to have the proper guidelines to follow in making a determination when there is an allegation that has been made.

In talking with our locals and members, the problems that do exist on alcohol and drug abuse in trucking is part of an overall or bigger safety problem that Mr. Donohue has alluded to, and that has become more since the industry was deregulated in 1980.

This has resulted in thousands of new entrants, both individuals and employers that own one or more trucks to enter the trucking industry, many of which are just completely disregarding not only the drug regulations and alcohol regulations currently on the books but completely disregarding the DOT regulations in the area of hours of service, et cetera.

From our view, these new entrants really have not and cannot be touched by a program like ours to control drug and alcohol use. These drivers can get away with abusing alcohol or drugs while driving because they have irresponsible management or because management and the drivers are one in the same; therefore, there is no discipline to be applied.

In our view these new entrants abusing alcohol and drugs are the same drivers who have fallen through the cracks when the government seems to enforce the insurance minimums and other vehicle safety regulations. Deregulation of the trucking industry has allowed the number of these irresponsible carriers and drivers to flourish.

We submit to you that it is in this segment of the trucking industry where drug and alcohol use needs attention. How can this best be accomplished? In our view, this could be best accomplished by vigorous enforcement of the Federal Motor Carrier Safety Regulations already on the books.

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As you know, under current FHWA regulations operating a motor vehicle under the influence of alcohol and the transportation, possession or unlawful use of a controlled substance is a disqualifying offense. As you heard Mr. Landis mention, it is one year and then a 3-year disqualification, and that is under section 391.15.

Also under current FHWA regulations a driver is not medically qualified to drive a commercial motor vehicle if a medical doctor has determined that he or she has a current clinical diagnosis of drug dependence. That is section 391.41.

Clearly, these two sections of regulations currently on the books at DoT provide the mechanism to disqualify drivers under the influence of alcohol or using drugs illegally, but these regulations are of no use if they are not enforced.

In our view the solution to the problem of alchol and drug use by drivers not covered by a program such as we have, which is a very stringent labor management program, is to increase enforcement of the current DOT regulations addressing the problem.

We would like to thank you, Mr. Chairman, for the opportunity to present our views, and as in the past we will continue to support you in your efforts to make our Nation's highways as safer place for the motoring public.

I would be glad to answer any questions that you have.

The CHAIRMAN. I want to thank both of you for your testimony today and also for your help in the past. The safety legislation which we have passed to date has been with the cooperation of both the ATA and the Teamsters, and you both have taken the lead. It has not been me. I have been able to do only what you have made possible. You have just been tremendous in the whole safety area.

Let me ask you, first, Mr. Donohue, do you generally agree with Mr. Durham? I know that you do not agree about the drug dependency standard. When he talks about new entrants and the people who are owner/operators, is that a large part of the saftey problem?

Mr. DONOHUE. I think it is a very significant part of the safety problem. The established companies, whether they are union or nonunion, have vigorous safety programs, inspection programs, and it just makes very good business for a well-established company to worry about the things that we are discussing today.

What you find when you get down to drug, alcohol, and vigorous safety abuses that we have been talking about is that often, very, very often, it is confined to those people who are trying to work longer hours and work under a great deal of frustration and who, in many instances, have recently come into the business or have recently experienced serious challenge in that segment of the business that they have held in the past.

The CHAIRMAN. Do you agree with Mr. Durham's conclusion that the solution to that is better enforcement?

Mr. DONOHUE. I believe deeply that people do what you expect and inspect, and I believe that we need to put full funds out into the State, and that we need to take every opportunity we can to find out—to iden-

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tify those that are operating unsafely and under the influence of drug and alcohol. I think we ought to move vigorously in that direction.

The CHAIRMAN. Now, to what extent do irregular work hours in the trucking industry contribute to a drug problem and a drinking problem? If they do contribute, what can be done about that?

Mr. DONOHUE. Well, I think if you understand that much of the product in this country moves at night and moves at hours that most of us sleep and that often there is an irregular work load, and that at certain times of the week or the month there is more demand for drivers and trucks, you can see an argument in terms of somebody saying, well, maybe I was called into work sooner than I expected or something.

We need as an industry and as unions and as common sense people to deal with that matter, but I think that generally that is a camouflage for a problem that people without good common sense use alcohol and drugs in a way that we do not expect them to.

By the way, we are not talking about—bad enough that folks drive cars and do that. We are talking about somebody that is driving an 80,000 pound vehicle, and I think that we need, if anything, to err in being overcautious and to inspect more and stop more and look into it. By the way——

The CHAIRMAN. I understand the problem of irregular hours. The problem is that somebody could be out on the town and not expecting to be called to work when the boss calls. He then finds himself behind the wheel earlier than he thought he was going to be.

Is that a problem?

Mr. DONOHUE. It is a problem in an occasional place, and their good common sense is needed. I just think that a boss or supervisor that lets anybody go out on the road, no matter how important the mission is, who is not fully capable of moving that truck in a safe manner is irresponsible and ought to be just, even if it is a shipper, ought to be just as guilty and accountable as the driver.

The CHAIRMAN. Mr. Durham, do you have any comments on this irregular work hours question?

Mr. DURHAM. I guess the discussion surfaced on the irregular work hours when we had a discussion on whether to change the .10 to something lower.

In the trucking industry today, and it has always been this, the service is the only thing the carrier has to sell. What we have attempted to do in our collective bargaining agreements is to make the drivers available as soon as possible so that basically what we refer to as our boards and so forth are subject to a 2 hour call.

When we start looking at alcohol levels, we start looking at some problems, some practical problems, and that is currently we have a DOT regulation which says no drinking within four hours. The driver is on a 2-hour call, and I really believe that if there is any action going to be take in that direction, we have to look at the other problem, and that is the driver that is called and he potentially could have a reading that would give him some problems.

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I think the industry and the teamsters are in complete agreement, and that is we do not want anyone out there driving with any alcohol in their system, but it is easy for us to say that. We believe that, and I think we are sincere in saying that. When you look, however, at the hundreds of thousands of drivers, union and nonunion, that are basically on call and you start talking in terms of very low alcohol levels it—I can see a lot of problems unless there is some provision made to accommodate that individual that would be put in that situation.

If I might just make one other comment, Mr. Chairman. You know, we can talk about pre-employment testing. We can talk about all of these things, but unless we have some—I guess it is somewhat like the railroads spoke about a few minutes ago. It is the industry people, the carriers, are going to be the ones that are going to enforce these regulations, whatever they are. If we do not have an employer that is interested in discipline and control the regulations really become meaningless unless you have just tens of thousands of inspectors out there stopping every truck.

We believe that we are taking the right course. We certainly have received some criticism, I guess, from our own members over this program, but we believe we have taken the right course. We think this is the answer where you are dealing with established carriers.

The problem is out there in the population that unfortunately we cannot control and unfortunately Mr. Donohue, to a large degree, cannot control. I think that is a challenge facing all of us in the industry; that is, how do we get at that problem?

The CHAIRMAN. Gentlemen, thank you very much.

The next panel is Mr. James Landry, senior vice president and general counsel, Air Transport Association of America; Capt. Richard B. Stone, executive chairman for Aeromedical Resources, Air Line Pilots Association; and Dr. Richard Masters, aeromedical advisor, Air Line Pilots Association.

STATEMENTS OF JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION OF AMERICA; AND CAPT. RICHARD B. STONE, EXECUTIVE CHAIRMAN FOR AEROMEDICAL RESOURCES, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY DR. RICHARD MASTERS, AEROMEDICAL ADVISOR

Mr. LANDRY. Mr. Chairman, my name is James E. Landry. I am senior vice president and general counsel of the Air Transport Association, which represents U.S. scheduled airlines, both passenger and cargo carriers. ATA appreciates the opportunity to participate in this examination of alcohol and drug use in the transportation industry. We believe your inquiry is a timely and important one, and we hope that the hearings will contribute in a meaningful way to reducing or eliminating alcohol and drug abuse in this country.

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I would like to limit my remarks today primarily to the matter of drug abuse in the airline industry. The problem of alcoholism and alcohol abuse in commercial aviation is one which management, union and the FAA have worked on successfully over the last several years to the point where it is no longer viewed as a serious problem.

I am not suggesting that alcoholism and alcohol abuse does not occur in the aviation community, as it does in all segments of modern society. I am saying, however, that to the extent there is a problem, we believe commercial aviation is coping effectively with that problem.

For several reasons, however, drug abuse in commercial aviation is a much more difficult matter to discuss. First, as a lawyer I take great pains not to use words imprecisely, and I therefore hesitate to say that a problem exists as might be indicated by your invitation to ATA to participate today.

To say that there is a problem presupposes that we have exact facts and figures about who in commercial aviation is using drugs, what drugs are being used, and to what extent such drugs are used by the employee population. In fact, very little of such information is available.

To say that there is a problem implies there is a safety risk about which the public should be concerned. In fact, to our knowledge there have been no injuries let alone fatal accidents resulting from airline employee drug use or, for that matter, as has been testified repeatedly this morning, from the use of alcohol.

It is for these reasons that I do not feel comfortable stating to this Committee that there is a drug problem, serious or otherwise, in the airline industry. Nevertheless, despite the absence of the type of information I have just described, we can say with authority that drug use and abuse does exist in the commercial aviation community.

Further, ATA believes that such drug use creates a potential—and I stress that word potential—threat to the public welfare which must be met with appropriate airline labor and government policies and work rules.

How do we know that drug use and abuse exist in commercial aviation? That knowledge comes from several sources. First, over the last few years virtually every carrier that has an employee assistance program of one kind or another has expanded coverage to include drug rehabilitation, and we know that employees are being referred for treatment. Since such information is confidential, we do not know the names of individual employees, but we do know that airline personnel are taking advantage of the services.

Second, in the last few years more than half of the ATA member carriers have instituted pre employment drug screening as part of the hiring process. Results from this testing have identified a significant portion of the applicant pool as drug users. The results vary from location to location and between job positions but range anywhere from 0 to 35 percent and sometimes even higher, with an overall average ranging from 10 to 15 percent.

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The CHAIRMAN. That would include pilots and everybody on down?

Mr. LANDRY. We are talking primarily of—the concentration has been more in the ground applicants, the ground service applicants, where we have had the greatest rejection rate. We have not had a high rejection rate in the pilot groups.

The CHAIRMAN. Have you lumped together everybody in your statistics from the people at the ticket counter to the pilots?

Mr. LANDRY. Yes. I believe those are gross figures, Mr. Chairman. As I indicated, they do vary from location to location, and as might be expected in certain metropolitan areas they are much, much higher than they are in other areas.

The CHAIRMAN. You do not mean to indicate that pilots have this level, do you?

Mr. LANDRY. No, I do not intend to indicate that at all. In fact, I think that quite the opposite is true, that the applicants for pilot positions have not shown anything resembling that kind of a rejection rate.

The CHAIRMAN. Thank you.

Mr. LANDRY. With respect to the question of what should the private sector do, this hearing is particularly timely. At the direction of the ATA member airline chief executive officers, last fall we began to look into the question of what can the airlines do as private sector employers to combat the spread of illicit drug use in the airline industry.

We talked to the FAA and to DOT. We talked to the Administrator and Chief Counsel of the Federal Railway Administration, and we formed a working group to develop an industry response to drug abuse in commercial aviation. The airline chief executive officers are currently reviewing the draft proposal which our working group put together and it is our intention, once we have a consensus, to sit down with our counterparts from ALPA, the other labor organizations and other appropriate representatives to work through this important subject jointly.

It is our belief that any policy or program, whatever it may be, must have the full support of management and labor to be successful. Broadly speaking, we believe that any employee whose duties affect or could affect airline safety should be prohibited from using any drug which adversely affects employee performance or judgment capability, unless authorized by a medical practitioner who determines that said performance by an employee will not be affected.

To enforce this requirement and to deter drug and alcohol abuse, we believe that provision must be made for mandatory and discretionary testing as has been done in the FRA program. We are confident that the drug testing technology available today provides accurate and reliable information provided quality control is maintained.

Keeping a watchful eye on the testing laboratory to insure quality control is, we believe, imperative. While testing is an extremely delicate issue, it is apparent that the tools to enforce such a policy are absolutely required to make it work.

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Furthermore, as the case law in this area develops, it is becoming clear that the limited intrusion into personal habits of employees, if handled in a professional and reasonable manner, must and will give way to the underlying public need without offending the U.S. Constitution.

It is not fair to ask the union representatives present today to comment on something they have not seen, but I am sure that they will agree in principle that a policy which will tend to eliminate drug and alcohol abuse among airline employees at no real expense in terms of personal rights—unless one happens to be an employee willing to risk the safety of his co-workers and the public—will benefit all parties concerned.

Before closing, Mr. Chairman, if I could take one more minute, let me briefly address what I see to be one area where the government may play an important role. One thing we are lacking is good, hard data on the effects of drug use on human performance skills. For example, to my knowledge only one study of the effects of marijuana use on pilot skills has been performed, and that was only just published in the November 1985 issue of the *American Journal of Psychiatry.*

Additional detailed studies of how drug use and abuse affects human performance capabilties required in the commercial aviation industry will advance the cause which has brought us together today. Your support of scientific research in this area is one way in which the federal government may play an important role in the war on drugs throughout our society, including the airline industry. I believe Ms. Goldman testified to the same effect earlier this morning.

In conclusion, I would like to underscore that the subject of employee drug abuse is a matter of very serious concern to the highest levels of management in the Nation's airlines. Although we cannot document that there is truly a drug abuse problem in the commercial airline industry, we know that drug use and abuse is there as it is everywhere in today's society.

The airlines' chief executive officers believe that any level of illicit drug use is inconsistent with the high standard of safety under which airlines must operate, and must be considered anathema to our operations. We look forward to working with union and government representatives to develop a response which not only gives airline management the authority to eliminate drug use by airline employees but which also protects individual employees from excessive intrusion into their personal lives.

Thank you, Mr. Chairman.

The CHAIRMAN. Captain Stone.

Mr. STONE. Thank you, Mr. Chairman. I am Richard Stone, executive chairman for aeromedical resources for the Air Line Pilots Association, which represents over 34,000 pilot members on 49 scheduled airlines. I am also the chairman of the Human Performance Safety Committee of the Pilots Association, and I also serve my own airline pilot group, Delta Airlines, as the chief accident investigator.

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Accompanying me is Dr. Richard Masters. He is our aeromedical advisor. He is certified as a fellow of the American College of Preventive Medicine and is a former military flight surgeon. He and his two associates in Denver in the office we call our Air Medical Office, assist individual pilot members of the Association with a variety of medical problems and act as consultants to the Association on medical and health matters as they relate to the airline pilot profession.

The Air Line Pilots Association appreciates the invitation to appear here today to share our views and expertise that has been developed over a number of years in dealing with alcoholism and alcohol abuse.

ALPA's serious commitment to an effective program of detection and treatment of alcholism among its members dates back some 13 years ago. In 1972 Dr. Masters addressed the Board of Directors of the Pilots Association on the need to identify and assist those pilots who were either actual or potential alcholics.

Our membership responded with enthusiastic support for the initiation of a formal program, and in 1974 ALPA received a grant from NIAAA, the National Institute for Alcholism and Alcohol Abuse, to establish an occupational program for airline pilots. That program report is right here, and I have six copies with me if you care to have those.

The Air Line Pilots Association sought the NIAAA grant with a goal of transferring responsibility for the program to the individual air carriers at the end of two years. While a few managements responded immediately and established programs that incorporated the concept of treating alcoholism as an illness, others have resisted our efforts from the beginning.

Unfortunately, the 2 years stretched into 8 years, until finally we decided we had done as much as we could to persuade some of the more recalcitrant managements to deal with the problem of alcohol abuse in an enlightened fashion. Today, just 2 years after relinquishing the leadership of this program we have had to go back and will provide training with our own resources for management pilot volunteers and sponsoring doctors.

Despite the resistance of some companies to establish programs, most major carriers have had sophisticated programs of peer identification and training, supervisory training, and member education in place and operating with professional management for some 10 years. All programs operate with the knowledge and cooperation of the FAA to insure regulatory management on a case-by-case basis.

In addition, joint union management agreements enhance the operation of the cooperative programs on airline properties. These joint agreements require a declaration to the FAA from the pilots—that the pilots have successfully completed the treatment program. As they return to flying, their certificate is validated by the FAA but their validation by the FAA requires a 2-year period of close supervision by the companies, the pilots and the FAA. These are in accordance with rules of part 67 of the Federal Air Regulations.

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In most of the airlines, both drug and alcohol rehabilitation are covered by insurance plans, and the use of sick leave has been generously granted to many of the people in the program. Clearly, the main objective of the participants in these concerted efforts over the past 10 or 12 years has been to identify and rehabilitate those pilots who suffer from alcoholism before a tragic accident occurs in which alcohol is implicated as a causal factor.

These combined programs have resulted in the successful rehabilitation of hundreds of airline pilots, thus enhancing our safety as well as salvaging lives, families and careers. We believe that together with the cooperation and assistance of NIAAA and the FAA and the airlines we have built a solid foundation of good quality programs in detection and treatment which we intend to continue.

Our only regret is that some airline managements continue to view alcoholism as an offense punishable by dismissal and refuse to become involved in our program. We are hopeful that our continued efforts and the encouragement of others in the industry working through ATA will result in bringing all carriers on board in the near future.

Let me now turn to the problem of drug abuse. According to our evidence, the incidence of drug abuse among our members is rare when measured against the more than 1,000 cases that are processed by our medical office every year.

The same method of detection is employed for drug and alcohol abuse by those companies that practice the employee assistance programs. The method of detection is chronic absenteeism and workplace problems. Although we have little evidence of drug use among our pilots to cause concern at this time, we recognize that in today's society with the widespread availability and use of illegal drugs we must constantly be alert for the key indicators of personal problems.

Of course, we are aware that there is a task force of airline executives and that they are developing an industry program to deal with the problem of drug abuse by airline employees. I am sure the ATA will consult with us when they have completed their work, and we can agree upon a program to recommend to our carriers.

Until we have seen that proposal and the evidence supporting it, of course, we must reserve judgment. I must state, however, that we have serious concerns about drug testing of employees which we all know has been widely promoted recently as a detection enforcement tool for employers. Because of the unreliability of drug testing that has been reported in the scientific literature by such organizations as the Center for Disease Control in Atlanta, we would be extremely reluctant to have our members submit to periodic or random testing which would result in false accusations because of poor equipment or procedures.

Mr. Chairman, that concludes my remarks, and I wish to thank you for the opportunity to present our views. Both Dr. Masters and I will be happy to answer any of your questions.

The CHAIRMAN. Dr. Masters, you do not have a separate statement but you are appearing with Captain Stone?

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Dr. MASTERS. No, sir, I have no separate statement.

The CHAIRMAN. Let me ask you first about pilots. Is there an acceptable level of alcohol for a pilot? I had always thought that the basic rule for airline pilots is no alcohol in the bloodstream.

Is that the acceptable standard?

Mr. STONE. I think our acceptable standard—and we originally published an article about drug testing in our publication called The *Airline Pilot*—we are saying to all pilots that as far as we are concerned the cockpit must be a drugfree environment.

The CHAIRMAN. You would not——

Mr. STONE. The same thing for alcohol.

The CHAIRMAN. You would not feel confident about flying with somebody who had had a drink, say, an hour before takeoff?

Mr. STONE. Absolutely not.

The CHAIRMAN. Or one marijuana cigarette the afternoon before a night flight, or something like that?

Mr. STONE. No, sir.

The CHAIRMAN. What happens today? Maybe there is no problem. Maybe no pilot has a problem. Maybe it is just so much part of the ethic, and I think that that is a major reason why it is just not done.

Suppose that it were? Suppose somebody were to show up just possibly slightly impaired?

Mr. STONE. It happens.

The CHAIRMAN. It does happen?

Mr. STONE. Absolutely. It does happen.

The CHAIRMAN. Then what occurs?

Mr. STONE. We expect the other members of the crew to identify that individual and that particular crew member would be replaced.

The CHAIRMAN. Does that happen?

Mr. STONE. Absolutely.

The CHAIRMAN. Does it also not happen?

Mr. STONE. I am sure it has not happened.

The CHAIRMAN. There really is a reluctanance, I think, for a lot of people to go up to a friend and say hey, you are drunk. We have seen that in automobiles. There is a big advertising campaign, friends don't let friends drive drunk.

We all know that people do that.

Mr. STONE. I think when I came into the business 28 years ago you did not rat on your brother. That was a thing, but when we started this program 13 years ago we found out that ratting on your brother probably would save his life because we all know that that is a terminal illness. We have taught our pilots that the best thing they can do if they really care for the other individuals that they are working with is to help them by leading them to a treatment.

The CHAIRMAN. Some people would do it, and some people would not, though, is that right?

Mr. STONE. I think everybody is convinced that that is the way to go now. I do not know of people that say I am not going to do that.

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The CHAIRMAN. Well, no, nobody would, but the big advertising campaign says not to let your friends drive drunk. But people do let their friends drive drunk. Good citizens do not, good friends do not. It is difficult when there is an employer standing in the background and you have to tell your friend he can not fly today. It is even tougher to go to your supervcisor and tell him. It is possible to do that, but it is very tough on many people.

Mr. STONE. I guess we all feel that our environment, at least, the air carrier environment, with the large number of passengers and high speeds that we are travelling, it is too fragile a safety environment to have somebody who is not operating properly in the airplane.

The CHAIRMAN. That is certainly one way to look at it. I would assume that there are some people who are more conscientious in that regard than others.

Let me ask you another question, and I would just ask from pure ignorance. It stands to reason as just a layman that you do not want to fly with a pilot who has been drinking. How about other people? You are, by your own statement, with respect to when you are ready to fly, a prohibitionist. Nothing, not a drink, absolutely no impairment is permissible for a pilot.

How do you feel about other people in the airline industry?

do you envision a less stringent rule for others such as thosewho fuel the plane and those who service it? Should they be held to the same standard?

Mr. STONE. I think it is even broader than that. I think anybody who has, who can have an impact on the conduct of safety of a large aircraft carrying passengers would have to undergo the same test, and I think it goes much further. I think it goes into the decision process inside the airline.

They—as an operating captain, I can make decisions about whether I am going to operate that trip. For instance, I handle what is called a minimum equipment list. A minimum equipment list will tell me what I am aliowed under FAA rules, and the company has agreed to, what kind of systems I can leave without operating.

For instance, we have three operating hydraulic systems, and I can operate without one of the hydraulic systems. I have two others, plus I have a third source that I can start, but I like to know that the man that made the decision of how many systems I can have for that airplane was not under the influence of either drugs or alcohol also, and that would have to go up into the higher reaches of the corporation, into the FAA and all of the people that service the airplane and anybody that has conduct that closely comes into my decision process.

The CHAIRMAN. A lot of people use alcohol and a lot of people use drugs in the United States. Does it scare you a little bit?

Mr. STONE. There is a real difference, because alcohol seems to be the approved drug of choice, and it is socially acceptable and it is not an illicit drug and so you can use it, but then that is the abused drug.

The CHAIRMAN. Does it scare you that people who are working with you may be impaired?

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Mr. STONE. Absolutely.

The CHAIRMAN. Do you think about it?

Mr. STONE. There are lots of people who work on the outside of that airplane that you and I crawl into, to go back to wherever we are going to, that I have no—that I cannot touch. A lot of people are servicing the airplane, loading baggage, and I am concerned about that.

I think that there is enough information in the system that ought to tell every supervisor and everybody responsible how to detect those kinds of people.

The CHAIRMAN. Now, let me ask you one other question. You object to testing, whether it be spot testing or testing for cause. I assume that it is your position. Is that based upon principle, or is that based upon the fact that you do not think that the testing mechanisms are precise enough?

Mr. STONE. Not precise enough.

The CHAIRMAN. Let us suppose hypothetically that there were easy and perfect testing mechanisms. Suppose it could be done. Would you object to it being done?

Mr. STONE. Absolutely not, as along as you could at least assure me that somebody would not be falsely accused.

The CHAIRMAN. Right, but let us suppose that blood alcohol could be accurately measured. Would you have any objection to people being tested for blood alcohol level?

Mr. STONE. Absolutely not.

The CHAIRMAN. The same for drugs?

Mr. STONE. Absolutely not.

The CHAIRMAN. Now, Dr. Masters, could you help me? Is it true that the effect of alcohol or drugs is intensified by altitude?

Dr. MASTERS. Generally speaking, that is true, yes.

The CHAIRMAN. Is one drink worth two in the air?

Dr. MASTERS. I would estimate that—well, to answer the question you would have to think in terms of what the altitude is that you are dealing with, and speaking of the average cabin altitude that commercial airliners operate under, then you would be probably magnifying the effect on time, yes.

The CHAIRMAN. You would be doubling it?

Dr. MASTERS. Doubling it.

The CHAIRMAN. So if a passenger has two of those little bottles he has the equivalent of four?

Dr. MASTERS. It could be the effect of having four, yes.

The CHAIRMAN. This is really an aside, but I think that sometimes airlines overdo the accessibility of alcohol to passengers on planes. I do not know that that is relevant to what we are talking about today.

Mr. STONE. The Association is on record agreeing with you.

The CHAIRMAN. Excuse me ?

Mr. STONE. I am just saying the Air Line Pilots Association is on record in agreeing with you, because that causes most of the cabin problems that we have with passengers.

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The CHAIRMAN. Do you have a number of cabin problems?

Mr. STONE. Yes, sir, we certainly do. We try to get those problems taken care of on the ground, and most of the carriers I think that we represent will deny boarding to somebody that is under the influence either of drugs or alcohol.

The CHAIRMAN. But then you get on the plane, and in first class the drinks are free and the stewardesses are very solicitous.

Mr. STONE. Not on my airplane they are not. Our flight attendants are instructed that if there is somebody who is obviously under the influence they tell us, and I have told a senior flight attendant to deny alcohol to that person. It does not make me too popular, and I know other members that do the same thing, and the airline managements will back us.

The CHAIRMAN. Mr. Landry, do you have anything further to add to the cause? I think we have pretty well covered it, but I wanted to give you another inning if you wanted it.

Mr. LANDRY. Thank you, Mr. Chairman. I agree with much of what the Captain has said.

The CHAIRMAN. I am, as you can gather from my comments, an advocate of testing. I support spot testing, but maybe that is not the right way to do it. There should at the very least be testing for cause when somebody shows up and appears to be impaired. The outward appearance is supported by some sort of chemical test.

I understand the difficulty in testing for drugs. I think it is something that we should be working to develop. At least testing for alcohol is reasonable.

Mr. STONE. Could I make one more comment, Mr. Chairman, in reference to that? I think we really view our own industry solutions to problems such as alcohol or drug abuse as better done by the carriers and the unions, rather than by Federal legislation. Policing ourselves has been much more successful than promulgating a special rule. That never seemed to help the situation until the system itself goes along with it.

The CHAIRMAN. I think it is terrific to have self-discipline and self-enforcement for individuals, businesses, and for unions. I do not think there is any substitute for that. No matter how many government types are in the act there are endless possibilities for circumventing the rules if people really want to do it. And there is no substitute for people wanting to be responsible.

I also think that, in a population of *X*-number of people who are involved in any line of work, there are going to be those who are not responsible. It seems to me that there has to be some way of attempting to provide a screen, particularly when the public safety interest is so great.

I very much appreciate your testimony and the testimony of all witnesses. That concludes the hearing.

[Whereupon, at 12:05 p.m. the Committee adjourned, subject to the call of the Chair.]

[The following information was subsequently received for the record:]

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STATEMENT OF SOUTHERN PACIFIC TRANSPORTATION CO.

Southern Pacific Transportation Company welcomes the opportunity to present comments on its experience in dealing with the alcohol and drug abuse problem in our industry. The use of intoxicants has been prohibited on the nation's railroads from the inception of the industry. Southern Pacific Transportation Company has had a specific rule covering intoxicants since 1897. In recent years, this rule has been revised to include illicit drugs and prescription medication abuse.

While in the early days of railroading, detection of intoxicant abusers was limited to visual observations, we have consistently attempted to employ the most reliable and advanced scientific detection devices as they became available. In the 1970s, Southern Pacific Transportation Company initiated the use of intoxilyzers to test employees for the presence of alcohol. Unfortunately, a court challenge to intoxilyzer use was upheld on the grounds that intoxilyzer testing was properly the subject of collective bargaining and could not be unilaterally employed by management.

Urine testing has been used for several years to detect the presence of alcohol or illicit drugs. About years ago, the in-house conclusion at Southern Pacific was that our employees were as deeply involved in drugs as the general population. This was unacceptable. Therefore, in August 1984 Southern Pacific Transportation Company expanded its toxicological testing from only major accidents and pre-employment urine testing through the 14 state system, to include a broader range of circumstances.

Since the instigation of the accelerated detection program, human factor accidents have declined 66% from August 1984 to the end of January 1986, compared to a like period immediately preceding the accelerated testing program. Lost-time injuries have declined by over 24%.

A number of exempt and officer employees of certain departments have been tested on an unannounced basis. There have been a number of positive test results among these people, and they have been put on medical leave, given the necessary rehabilitation and at the appropriate time returned to their former jobs on a probationary basis without loss of pay or status.

Since our accelerated testing program began, 1,955 Transportation Department employees have been tested, and 213 have tested positive for illegal substances.

In the first month of our accelerated testing program, over 23% of those employees tested were found positive for the presence of drugs or alcohol in their system. This figure has declined steadily over the past 18 months to less than half of that figure. We believe this to be solid evidence of the strong deterrent effect of urinalysis testing.

Employees who are found to have been in violation of alcohol and drug prohibition rule are offered the opportunity of submitting to a drug rehabilitation program designed to fit their particular needs by our family assistance counselors. Upon satisfactory completion of the rehabilitation program, the employee is eligible to return to work without loss of seniority, on a probationary basis for two years. Second offenders are considered on an individual-case basis, after one year. Third offenders are never reinstated unless directed by an arbitration award.

Southern Pacific Transportation Company has and continues to be an active supporter of the efforts of the Federal Railroad Administration in its comprehensive study of alcohol and drug abuse in the railroad industry, and the promulgation of rules for the control of alcohol and drug use in railroad operations.

We believe we have addressed a serious and vital issue, stepped forward to lead in seeking governmental intervention and a workable solution to drug use and alcohol abuse problems in the railroad industry. The remarkable results seen at Southern Pacific are both rewarding and alarming.

To realize that such a large portion of the work force is involved in drugs is appalling, yet a reality that must be faced. Therefore, what an aggressive and intense program of identification and rehabilitation has accomplished in less than two years is hope that it will aid in making drug use unfashionable and alcohol dependency a disease that people will be willing to bring under control. Also, this program has gone a long way to bring home to all employees message that if you're going to be a railroader, you are not going to use drugs or abuse alcohol. People having these problems have a choice of either availing themselves to the Company-sponsored employee assistance program or may expect to eventually be separated from our work force.

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